MISSISSIPPI CODE 1972
Annotated

Alcoholic Beverages
Agriculture, Horticulture and Animals

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME FOURTEEN A
ALCOHOLIC BEVERAGES; AGRICULTURE, HORTICULTURE; AND ANIMALS

§§ 67-1-1 to 69-53-7

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2012 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972. A copy of that act is set out in Volume 1, following the Publisher's Foreword.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

PUBLISHER'S FOREWORD

This 2012 Volume 14A of the Mississippi Code of 1972 Annotated represents material appearing in both the original 1973 bound volume and the 1991 and 2005 Replacement Volume 14, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2012 Regular Legislative Session.

This volume contains the text of Titles 67 and 69 of the Mississippi Code of 1972 Annotated, as amended through the 2012 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water St., Charlottesville, VA 22902-5389.

September 2012 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Amendment Notes
— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
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— Editor's Notes
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— Source Notes
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— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects.*

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects.*

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates.*

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor. Acts affecting voting rights and procedures take effect on the date the United States Attorney General interposes no objection under § 5 of the Voting Right Act of 1965.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note. :

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or “catchlines” for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.

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CHAPTER 1

Local Option Alcoholic Beverage Control

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§ 67-1-1. Short title.

This chapter shall be known and may be cited as the "Local Option Alcoholic Beverage Control Law" of the State of Mississippi.

SOURCES: Codes, 1942, § 10265-02; Laws, 1966, ch. 540, § 2, eff from and after July 1, 1966.

Cross References — Administration and enforcement of the Local Option Alcoholic Beverage Control Law by the department of revenue, see § 27-3-31.

Sales tax on alcoholic beverages, see § 27-65-25.

Distilled spirits, wine and malt beverages not being subject to control under Controlled Substances Law, see § 41-29-111.

Prohibition and punishing for furnishing alcoholic beverages to offenders, or taking such item on property occupied by them, see §§ 47-5-191 to 47-5-195.

Procedures for appeals from decisions of the State Tax Commission, in situations not subject to §§ 67-1-1 et seq., see § 27-3-29.

Board of Tax Appeals to have jurisdiction over all administrative appeals regarding certain decisions and actions of the Department of Revenue under §§ 67-1-1 et seq., as provided for under § 67-1-72, see § 27-4-3.

Sale and manufacture of light wine and beer, see §§ 67-3-1 et seq.

Intoxicating beverage offenses generally, see §§ 97-31-5 et seq.

Prosecutions for intoxicating beverage offenses generally, see §§ 99-27-1 et seq.

JUDICIAL DECISIONS

1. In general.

Since the Native Wine Act (§§ 67-5-1 et seq.) consists of laws relating specifically to one form of alcoholic beverage, it is, as such, special legislation which will prevail over the general statutes dealing with alcohol that are contained in Chapter 1 of Title 67 (67-1-1 et seq). Martin v. State, 501 So. 2d 1124 (Miss. 1987).

ATTORNEY GENERAL OPINIONS

The general rule is that municipalities may not regulate activity that has been preempted by state law and regulation. Regulation of the manufacture, sale, distribution, possession and transportation of intoxicating liquor is preempted by state law. Likewise, designation of qualified resort areas is a matter preempted by state law. Diaz, Oct. 23, 1991, A.G. Op. #91-0681.

The regulation of sales of alcoholic beverages containing 5% or more of alcohol, or intoxicating liquor, is an area wholly within the authority of the State Tax Commission; there is no authority for a municipality to adopt an ordinance that would further regulate the sale of intoxicating liquors by extending the hours during which the sale of such beverages by certain permitted retailers may be lawfully made. Tyner, March 5, 1999, A.G. Op. #99-0074.

RESEARCH REFERENCES

ALR. Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquor. 4 A.L.R.2d 1216.

Effect of state regulation of liquor sales on municipal power to impose occupation license or tax for revenue. 6 A.L.R.2d 737.

Judicial notice of intoxicating quality, and the like, of liquor or particular liquid, from its name. 49 A.L.R.2d 764.

Validity and construction of measure prohibiting retail alcoholic beverage seller from furnishing free food or drink. 66 A.L.R.2d 758.

Premises liability: liability of innkeeper, restauranteur or tavernkeeper for injury occurring on or about premises to guest or patron by person other than proprietor or his servant. 70 A.L.R.2d 628.

Regulations forbidding employees or entertainers from drinking or mingling with patrons, or soliciting drinks from them. 99 A.L.R.2d 1216.

Liability of hotel or motel operator for injury to guest resulting from assault by third party. 28 A.L.R.4th 80.

Tavernkeeper's liability to patron for third person's assault. 43 A.L.R.4th 281.

§ 67-1-3. Prohibition reannounced as law of State.

The policy of this State is reannounced in favor of prohibition of the manufacture, sale, distribution, possession and transportation of intoxicating liquor; and the provisions against such manufacture, sale, distribution, possession and transportation of intoxicating liquor, as contained in Chapter 31 of Title 97, Mississippi Code of 1972 and elsewhere, are hereby redeclared the law of this state. The purpose and intent of this chapter is to vigorously enforce the prohibition laws throughout the state, except in those counties and municipalities voting themselves out from under the prohibition law in accordance with the provisions of this chapter, and, in those counties and municipalities, to require strict regulation and supervision of the manufacture, sale, distribution, possession and transportation of intoxicating liquor under a system of state licensing of manufacturers, wholesalers and retailers, which licenses shall be subject to revocation for violations of this chapter.

All laws and parts of laws in conflict with this chapter are repealed only to the extent of such conflict; however, except as is provided in this chapter, all laws prohibiting the manufacture, sale, distribution and possession of alcoholic beverages, which are not in conflict with this chapter shall remain in full force and effect, and all such laws shall remain in full force and effect in counties and municipalities wherein the manufacture, sale, distribution and possession of alcoholic beverages has not been authorized as a result of an election held under Section 67-1-11 or Section 67-1-14, Mississippi Code of 1972, or as otherwise provided in this chapter.

SOURCES: Codes, 1942, §§ 10265-01, 10265-36; Laws, 1966, §§ 1, 36; Laws, 1990, ch. 569, § 2, eff from and after passage (approved April 9, 1990).

Cross References — Powers and duties of bureau of drug enforcement, see § 41-29-111.

Unlawful alcoholic preparations, see § 97-31-5.

JUDICIAL DECISIONS

1. In general.

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. Martin v. State, 501 So. 2d 1124 (Miss. 1987).

It is apparent from the enumerated powers, functions, duties, and responsibilities reposed in and imposed upon the state tax commission in widely separated parts of the Local Option Alcoholic Beverage Control Law, that it was the intent of the legislature to grant the commission wide latitude and discretion in considering and acting upon applications for permits to operate retail liquor stores. Mississippi State Tax Comm'n v. Package Store, Inc., 208 So. 2d 46 (Miss. 1968).

Subsection 3 of Code 1942, § 7545-71 under which all laws and ordinances of a city were made applicable to a noncontiguous municipal airport was repealed by implication by this section to the extent that it conflicted with the provisions of the Local Option Beverage Control Law, so although the city was located in a county where the sale of alcoholic beverages was legal this did not authorize the sale of such beverages at the municipal airport which was located in a "dry" county. Jackson Mun. Airport Auth. v. Shivers, 206 So. 2d 190 (Miss. 1968).

RESEARCH REFERENCES

ALR. Operation and effect, in dry territory, of general state statute making sale or possession for sale of intoxicating liquor, without a license, an offense. 8 A.L.R.2d 750.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 51 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 46-49, 360.

§ 67-1-5. Definitions.

For the purposes of this chapter and unless otherwise required by the context:

(a) "Alcoholic beverage" means any alcoholic liquid, including wines of more than five percent (5%) of alcohol by weight, capable of being consumed as a beverage by a human being, but shall not include light wine and beer, as defined in Section 67-3-3, Mississippi Code of 1972, but shall include native wines. The words "alcoholic beverage" shall not include ethyl alcohol manufactured or distilled solely for fuel purposes or beer of an alcoholic content of more than eight percent (8%) by weight if the beer is legally manufactured in this state for sale in another state.

(b) "Alcohol" means the product of distillation of any fermented liquid, whatever the origin thereof, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol.

(c) "Distilled spirits" means any beverage containing more than four percent (4%) of alcohol by weight produced by distillation of fermented grain, starch, molasses or sugar, including dilutions and mixtures of these beverages.

(d) "Wine" or "vinous liquor" means any product obtained from the alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries and made in accordance with the revenue laws of the United States.

(e) "Person" means and includes any individual, partnership, corporation, association or other legal entity whatsoever.

(f) "Manufacturer" means any person engaged in manufacturing, distilling, rectifying, blending or bottling any alcoholic beverage.

(g) "Wholesaler" means any person, other than a manufacturer, engaged in distributing or selling any alcoholic beverage at wholesale for delivery within or without this state when such sale is for the purpose of resale by the purchaser.

(h) "Retailer" means any person who sells, distributes, or offers for sale or distribution, any alcoholic beverage for use or consumption by the purchaser and not for resale.

(i) "State Tax Commission," "commission" or "department" means the Department of Revenue of the State of Mississippi, which shall create a division in its organization to be known as the Alcoholic Beverage Control Division. Any reference to the commission or the department hereafter means the powers and duties of the Department of Revenue with reference to supervision of the Alcoholic Beverage Control Division.

(j) "Division" means the Alcoholic Beverage Control Division of the Department of Revenue.

(k) "Municipality" means any incorporated city or town of this state.

(*l*) "Hotel" means an establishment within a municipality, or within a qualified resort area approved as such by the department, where, in consideration of payment, food and lodging are habitually furnished to travelers and wherein are located at least twenty (20) adequately furnished and completely separate sleeping rooms with adequate facilities that persons usually apply for and receive as overnight accommodations. Hotels in towns or cities of more than twenty-five thousand (25,000) population are similarly defined except that they must have fifty (50) or more sleeping rooms. Any such establishment described in this paragraph with less than fifty (50) beds shall operate one or more regular dining rooms designed to be constantly frequented by customers each day. When used in this chapter, the word "hotel" shall also be construed to include any establishment that meets the definition of "bed and breakfast inn" as provided in this section.

(m) "Restaurant" means:

(i) A place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation, which has suitable seating facilities for guests, and which has suitable kitchen facilities connected therewith for cooking an assortment of foods and meals commonly ordered at various hours of the day; the service of such food as sandwiches and salads only shall not be deemed in compliance with this requirement. Except as otherwise provided in this paragraph, no place shall qualify as a restaurant under this chapter unless twenty-five percent (25%) or more of the revenue derived from such place shall be from the preparation, cooking and serving of meals and not from the sale of beverages, or unless the value of food given to and consumed by customers is equal to twenty-five percent (25%) or more of total revenue; or

(ii) Any privately owned business located in a building in a historic district where the district is listed in the National Register of Historic

Places, where the building has a total occupancy rating of not less than one thousand (1,000) and where the business regularly utilizes ten thousand (10,000) square feet or more in the building for live entertainment, including not only the stage, lobby or area where the audience sits and/or stands, but also any other portion of the building necessary for the operation of the business, including any kitchen area, bar area, storage area and office space, but excluding any area for parking. In addition to the other requirements of this subparagraph, the business must also serve food to guests for compensation within the building and derive the majority of its revenue from event-related fees, including, but not limited to, admission fees or ticket sales to live entertainment in the building, and from the rental of all or part of the facilities of the business in the building to another party for a specific event or function.

(n) "Club" means an association or a corporation:

(i) Organized or created under the laws of this state for a period of five (5) years prior to July 1, 1966;

(ii) Organized not primarily for pecuniary profit but for the promotion of some common object other than the sale or consumption of alcoholic beverages;

(iii) Maintained by its members through the payment of annual dues;

(iv) Owning, hiring or leasing a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests;

(v) The affairs and management of which are conducted by a board of directors, board of governors, executive committee, or similar governing body chosen by the members at a regular meeting held at some periodic interval; and

(vi) No member, officer, agent or employee of which is paid, or directly or indirectly receives, in the form of a salary or other compensation any profit from the distribution or sale of alcoholic beverages to the club or to members or guests of the club beyond such salary or compensation as may be fixed and voted at a proper meeting by the board of directors or other governing body out of the general revenues of the club.

The department may, in its discretion, waive the five-year provision of this paragraph. In order to qualify under this paragraph, a club must file with the department, at the time of its application for a license under this chapter, two (2) copies of a list of the names and residences of its members and similarly file, within ten (10) days after the election of any additional member, his name and address. Each club applying for a license shall also file with the department at the time of the application a copy of its articles of association, charter of incorporation, bylaws or other instruments governing the business and affairs thereof.

(o) "Qualified resort area" means any area or locality outside of the limits of incorporated municipalities in this state commonly known and accepted as a place which regularly and customarily attracts tourists, vacationists and other transients because of its historical, scenic or recreational facilities or attractions, or because of other attributes which regularly and customarily appeal to and attract tourists, vacationists and other transients in substantial numbers; however, no area or locality shall so qualify as a resort area until it has been duly and properly approved as such by the department.

(i) The department may approve an area or locality outside of the limits of an incorporated municipality that is in the process of being developed as a qualified resort area if such area or locality, when developed, can reasonably be expected to meet the requisites of the definition of the term "qualified resort area." In such a case, the status of qualified resort area shall not take effect until completion of the development.

(ii) The term includes any state park which is declared a resort area by the department; however, such declaration may only be initiated in a written request for resort area status made to the department by the Executive Director of the Department of Wildlife, Fisheries and Parks, and no permit for the sale of any alcoholic beverage, as defined in this chapter, except an on-premises retailer's permit, shall be issued for a hotel, restaurant or bed and breakfast inn in such park.

(iii) The term includes:

1. The clubhouses associated with the state park golf courses at the Lefleur's Bluff State Park, the John Kyle State Park, the Percy Quin State Park and the Hugh White State Park;

2. The clubhouse and associated golf course where the golf course is adjacent to one or more planned residential developments and the golf course and all such developments collectively include at least seven hundred fifty (750) acres and at least four hundred (400) residential units;

3. Any facility located on property that is a game reserve with restricted access that consists of at least three thousand (3,000) contiguous acres with no public roads and that offers as a service hunts for a fee to overnight guests of the facility;

4. Any facility located on federal property surrounding a lake and designated as a recreational area by the United States Army Corps of Engineers that consists of at least one thousand five hundred (1,500) acres;

5. Any facility that is located in a municipality that is bordered by the Pearl River, traversed by Mississippi Highway 25, adjacent to the boundaries of the Jackson International Airport and is located in a county which has voted against coming out from under the dry law; however, any such facility may only be located in areas designated by the governing authorities of such municipality;

6. Any municipality with a population in excess of ten thousand (10,000) according to the latest federal decennial census that is located in a county that is bordered by the Pearl River and is not traversed by Interstate Highway 20, with a population in excess of forty-five thousand (45,000) according to the latest federal decennial census;

7. The West Pearl Restaurant Tax District as defined in Chapter 912, Local and Private Laws of 2007.

The status of these municipalities, districts, clubhouses, facilities and golf courses described in subparagraph (iii) of this paragraph (o) as qualified resort areas does not require any declaration of same by the department.

(p) "Native wine" means any product, produced in Mississippi for sale, having an alcohol content not to exceed twenty-one percent (21%) by weight and made in accordance with revenue laws of the United States, which shall be obtained primarily from the alcoholic fermentation of the juice of ripe grapes, fruits, berries or vegetables grown and produced in Mississippi; provided that bulk, concentrated or fortified wines used for blending may be produced without this state and used in producing native wines. The department shall adopt and promulgate rules and regulations to permit a producer to import such bulk and/or fortified wines into this state for use in blending with native wines without payment of any excise tax that would otherwise accrue thereon.

(q) "Native winery" means any place or establishment within the State of Mississippi where native wine is produced in whole or in part for sale.

(r) "Bed and breakfast inn" means an establishment within a municipality where in consideration of payment, breakfast and lodging are habitually furnished to travelers and wherein are located not less than eight (8) and not more than nineteen (19) adequately furnished and completely separate sleeping rooms with adequate facilities, that persons usually apply for and receive as overnight accommodations; however, such restriction on the minimum number of sleeping rooms shall not apply to establishments on the National Register of Historic Places. No place shall qualify as a bed and breakfast inn under this chapter unless on the date of the initial application for a license under this chapter more than fifty percent (50%) of the sleeping rooms are located in a structure formerly used as a residence.

(s) "Board" shall refer to the Board of Tax Appeals of the State of Mississippi.

(t) "Spa facility" means an establishment within a municipality or qualified resort area and owned by a hotel where, in consideration of payment, patrons receive from licensed professionals a variety of private personal care treatments such as massages, facials, waxes, exfoliation and hairstyling.

(u) "Art studio or gallery" means an establishment within a municipality or qualified resort area that is in the sole business of allowing patrons to view and/or purchase paintings and other creative artwork.

(v) "Cooking school" means an establishment within a municipality or qualified resort area and owned by a nationally recognized company that offers an established culinary education curriculum and program where, in consideration of payment, patrons are given scheduled professional group instruction on culinary techniques. For purposes of this paragraph, the definition of cooking school shall not include schools or classes offered by grocery stores, convenience stores or drugstores.

SOURCES: Codes, 1942, § 10265-05; Laws, 1966, ch. 540, § 5; Laws, 1976, ch. 467, § 12; Laws, 1977, ch. 488, § 2; Laws, 1980, ch. 348, § 1; Laws, 1984, ch. 425, § 1; Laws, 1987, ch. 358; Laws, 1988, ch. 384; Laws, 1990, ch. 569, § 3; Laws, 1994, ch. 558, § 20; Laws, 1998, ch. 306, § 2; Laws, 1999, ch. 453, § 19; Laws, 2004, ch. 397, § 1; Laws, 2008, ch. 366, § 1; Laws, 2009, ch. 465, § 1; Laws, 2009, ch. 492, § 126; Laws, 2009, ch. 558, § 1; Laws, 2012, ch. 323, § 2; Laws, 2012, ch. 428, § 1; Laws, 2012, ch. 501, § 7, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 126 of ch. 492, Laws of 2009, effective July 1, 2010 (approved on April 6, 2009), amended this section. Section 1 of ch. 465, Laws of 2009, effective July 1, 2009 (approved March 30, 2009) and Section 1 of ch. 558, Laws of 2009, effective from and after May 26, 2009, also amended this section. As set out above, this section reflects the language of all of the above amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

Section 2 of Chapter 323, Laws of 2012, effective July 1, 2012 (approved April 5, 2012), Section 1 of Chapter 428, Laws of 2012, effective from and after passage (approved April 18, 2012), and Section 7 of Chapter 501, Laws of 2012, effective July 1, 2012 (approved April 30, 2012), amended this section. As set out above, this section reflects the language of all three amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

On May 26, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2009, ch. 558.

Amendment Notes — The first 2012 amendment (ch. 323) substituted "but shall not include light wine and beer, as defined in Section 67-3-3" for "but shall not include wine containing five percent (5%) or less of alcohol by weight and shall not include beer containing not more than five percent (5%) of alcohol by weight, as provided for in

Section 67-3-5" in the first sentence of (a); and inserted "the" preceding "Board of Tax Appeals" in (s).

The second 2012 amendment (ch. 428), in (m), added "Except as otherwise provided in this paragraph" at the beginning of the last sentence in (i); added (ii); and made minor stylistic changes.

The third 2012 amendment (ch. 501), in (a), substituted "but shall not include light wine and beer, as defined in Section 67-3-3" for "but shall not include wine containing five percent (5%) or less of alcohol by weight and shall not include beer containing not more than five percent (5%) of alcohol by weight, as provided for in Section 67-3-5" in the first sentence and added "or beer of an alcoholic content ... for sale in another state" at the end of the last sentence.

Cross References — Department of revenue generally, see §§ 27-3-1 et seq.

Application of definitions to alcoholic beverage taxes, see § 27-71-3.

Application of definition of alcoholic beverage, as defined in this section, to additional markup on such beverages for alcoholism treatment and rehabilitation fund, see § 27-71-7.

Labeling requirements for light wines and beer, see § 27-71-509.

Application of definition of alcoholic beverage to provisions relative to conduct of Department of Corrections officers and employees, see § 47-5-191.

Provisions relating to state parks, see §§ 55-3-1 et seq.

Applicability of this section to the qualifications for a Class 2, Temporary retailer's permit, see § 67-1-51.

Temporary permit for those seeking to transfer either a package retailer's permit or an on-premises retailer's permit, see § 67-1-51.

Provision that no "on-premises" retailer's permit shall be renewed for any "hotel" or "restaurant" unless the commission is satisfied that the holder continues to meet the requirements of a hotel or restaurant, as defined in this section, see § 67-1-63.

Right of native wineries to advertise sale of native wines, see § 67-1-85.

Native Wines Law, see § 67-5-1 et seq.

JUDICIAL DECISIONS

1. In general.

Phrase "alcoholic beverage" does not as matter of law exclude beer when phrase is used outside Chapter 1 of Title 67 of Mississippi Statutes. Wilson ex rel. Wilson v. United States Fid. & Guar. Ins. Co., 830 F.2d 588 (5th Cir. 1987).

Policy of liability insurance covering convenience store, which policy excluded coverage for bodily injury for which insured may be held liable by reason of selling, serving or giving of any alcoholic beverage to minor, excludes coverage for bodily injury by reason of selling, serving or giving of "beer", even though definition of alcoholic beverage under state law excludes beer, as common and ordinary meaning of beer is beverage containing alcohol; liability policy which excluded coverage for bodily injury for which store was liable by reason of selling of alcoholic beverage to minor did not cover bodily injuries sustained in accident caused by underaged motorist's intoxication from drinking beer which he bought at store, despite statute which excluded beer from definition of alcoholic beverages. Wilson ex rel. Wilson v. United States Fid. & Guar. Ins. Co, 659 F. Supp. 553 (S.D. Miss. 1987), aff'd, 830 F.2d 588 (5th Cir. 1987).

Inasmuch as Code 1942, § 10625-05 excludes from the definition of "alcoholic beverage" beer and wine of not more than 4 percent of alcohol by weight, the authority conferred upon agents of the alcoholic beverage commission under Code 1942, §§ 10265-11 and 10265-17 does not authorize and empower them to check a retailer's beer license to see whether it was in date or to inspect beer stock to determine whether it was Mississippi-taxed beer. Jolliff v. State, 215 So. 2d 234 (Miss. 1968), but see Cumbest v. Commissioners of Election, 416 So. 2d 683 (Miss. 1982).

ATTORNEY GENERAL OPINIONS

The production and sale of native wine in a legally "dry" county is lawful. Cadle, January 22, 1999, A.G. Op. #98-0796.

RESEARCH REFERENCES

ALR. What constitutes "sale" of liquor in violation of statute or ordinance. 89 A.L.R.3d 551.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 3 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 1, 2, 3.

§ 67-1-7. General applicability of chapter.

(1) Except as otherwise provided in Section 67-9-1 for the transportation and possession of limited amounts of alcoholic beverages for the use of an alcohol processing permittee, and subject to all of the provisions and restrictions contained in this chapter, the manufacture, sale, distribution, possession and transportation of alcoholic beverages shall be lawful, subject to the restrictions hereinafter imposed, in those counties and municipalities of this state in which, at a local option election called and held for that purpose under the provisions of this chapter, a majority of the qualified electors voting in such election shall vote in favor thereof. Except as otherwise provided in Section 67-1-51 for holders of a caterer's permit, the manufacture, sale and distribution of alcoholic beverages shall not be permissible or lawful in counties except in (a) incorporated municipalities located within such counties, (b) qualified resort areas within such counties approved as such by the State Tax Commission, or (c) clubs within such counties, whether within a municipality or not. The manufacture, sale, distribution and possession of native wines shall be lawful in any location within any such county except those locations where the manufacture, sale or distribution is prohibited by law other than this section or by regulations of the commission.

(2) Notwithstanding the foregoing, within any state park or any state park facility that has been declared a qualified resort area by the commission, and within any qualified resort area as defined under Section 67-1-5(o)(iii), an on-premises retailer's permit may be issued for the qualified resort area, and the permittee may lawfully sell alcoholic beverages for consumption on his licensed premises regardless of whether or not the county or municipality in which the qualified resort area is located has voted in favor of coming out from under the dry law, and it shall be lawful to receive, store, sell, possess and consume alcoholic beverages on the licensed premises, and to sell, distribute and transport alcoholic beverages to the licensed premises.

SOURCES: Codes, 1942, § 10265-04; Laws, 1966, ch. 540, § 4; Laws, 1976, ch. 467, § 13; Laws, 1990, ch. 569, § 4; Laws, 1994, ch. 558, § 21; Laws, 1996, ch. 417, § 1; Laws, 2004, ch. 397, § 2; Laws, 2006, ch. 529, § 6; Laws, 2008, ch. 366, § 2; Laws, 2009, ch. 558, § 3, eff May 26, 2009 (the date the United States

Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On May 26, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2009, ch. 558.

Cross References — Provisions relating to state parks, see §§ 55-3-1 et seq.

Native Wines Law, see § 67-5-1 et seq.

JUDICIAL DECISIONS

1. In general.

Ordinance prohibiting commercial establishments from allowing consumption of alcoholic beverages between midnight and 7:00 a.m., which defined "consumption" to include possession in open containers as well as ingestion, was not preempted be statute expressly permitting possession of alcoholic beverages in "wet" municipalities absent clear expression of legislative intent to permit consumption, as opposed to mere possession, without limitation in wet areas, given broad grant of authority to municipalities to regulate impact of alcoholic beverages upon public health, morals, and safety and public policy favoring prevention of alcohol-related altercations and motor vehicle accidents, as limiting possession of opened containers was reasonable and necessary to enforce limitations on consumption. Maynard v. City of Tupelo, 691 So. 2d 385 (Miss. 1997).

In counties where the general prohibition laws have been suspended through legalization of the sale of alcoholic liquors by an election held under the local option alcoholic beverage control law, in order to charge an unlawful sale the indictment or affidavit must charge that the local option law is in effect in that county, and sufficient facts to show a violation of one of the provisions of the local option law. Wortham v. State, 219 So. 2d 923 (Miss. 1969).

In a county in which the general prohibition laws had been suspended, it was error to permit the amendment of an indictment charging a violation of those laws so as to charge the commission of an offense prohibited under the local option beverage control law. Wortham v. State, 219 So. 2d 923 (Miss. 1969).

An indictment which charges an unlawful sale of intoxicating liquor in violation of the general prohibition laws fails to charge an indictable offense where the act occurred in a county where those laws had been suspended by an election held under the local option alcoholic beverage control law. Wortham v. State, 219 So. 2d 923 (Miss. 1969).

The state tax commission not only has the authority as a legislative administrative agency to hold a hearing upon the application of a county board of supervisors to determine "resort areas" but it was the commission's duty to hold a public hearing upon the application; and a failure to conduct a hearing which is required by statute would have been unlawful, arbitrary, and capricious. Graves v. Rhoden, 218 So. 2d 424 (Miss. 1969).

ATTORNEY GENERAL OPINIONS

Planning commission pursuant to a zoning ordinance may not deny a conditional use permit to an owner of a package store who has obtained a license to sell alcoholic beverages from the State Tax Commission. Baskin, April 25, 1997, A.G. Op. #97-0139.

Municipalities may not regulate activity that has been preempted by state law and regulation. Moore, Nov. 21, 1997, A.G. Op. #97-0708.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 55 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 80 et seq.

§ 67-1-9. Alcoholic beverages prohibited except as authorized in this chapter; penalties.

(1) It shall be unlawful for any person to manufacture, distill, brew, sell, possess, import into this state, export from the state, transport, distribute, warehouse, store, solicit, take order for, bottle, rectify, blend, treat, mix or process any alcoholic beverage except as authorized in this chapter. However, nothing contained herein shall prevent importers, wineries and distillers of alcoholic beverages from storing such alcoholic beverages in private bonded warehouses located within the State of Mississippi for the ultimate use and benefit of the State Tax Commission as provided in Section 67-1-41. The commission is hereby authorized to promulgate rules and regulations for the establishment of such private bonded warehouses and for the control of alcoholic beverages stored in such warehouses. Additionally, nothing herein contained shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession, or prevent any hospital or other institution caring for sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution. Any drugstore employing a licensed pharmacist may possess and use alcoholic liquors in the combination of prescriptions of duly licensed physicians. The possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this chapter.

(2) Any person, upon conviction of any provision of this section, shall be punished as follows:

(a) By a fine of not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail not less than one (1) week nor more than three (3) months, or both, for the first conviction under this section.

(b) By a fine of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00) or by imprisonment in the county jail not less than sixty (60) days, nor more than six (6) months, or both fine and imprisonment, for the second conviction for violating this section.

(c) By a fine of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00) or by imprisonment in the State Penitentiary not less than one (1) year, nor more than five (5) years, or both fine and imprisonment, for conviction the third time under this section for the violation thereof after having been twice convicted of its violation.

SOURCES: Codes, 1942, § 10265-06; Laws, 1966, ch. 540, § 6; Laws, 1985, ch. 412; Laws, 1993, ch. 505, § 1, eff from and after July 1, 1993.

Cross References — Possession of alcoholic beverages, light wine and beer by person holding alcohol processing permit, see § 67-9-1.

Exceptions to rules prohibiting alcoholic beverages, see §§ 97-31-23 et seq.

JUDICIAL DECISIONS

1. In general.

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. Martin v. State, 501 So. 2d 1124 (Miss. 1987).

RESEARCH REFERENCES

ALR. Interplay between Twenty-First Amendment and Commerce Clause concerning state regulation of intoxicating liquors. 116 A.L.R.5th 149.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 276 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 311 et seq., 380.

§ 67-1-10. Penalties for owning, controlling or possessing illegal distillery, or parts thereof; exceptions.

It shall be unlawful for any person, firm or corporation to own or control or have in such person's, firm's or corporation's possession any distillery commonly called a still or any integral part thereof. It shall not be unlawful to own or have in possession a distillery or still in the following circumstances:

(a) Where the same is used exclusively for the distillation of rosin products;

(b) Where the same is used exclusively for the distillation of water;

(c) Where the same is kept and lawfully used in any laboratory;

(d) Where the same is in the possession of any officers of the law, to be disposed of according to law; or

(e) Where the person or corporation can prove that the same is in his or their possession for the purpose of being delivered up to an officer of the law to be disposed of according to law. Any person guilty of violating this section shall be guilty of a felony and upon conviction thereof shall be confined in the State Penitentiary not less than one (1) year, nor more than three (3) years for a first offense, and for a second offense he shall be confined in the State Penitentiary not less than five (5), nor more than ten (10) years.

SOURCES: Laws, 1993, ch. 505, § 2, eff from and after July 1, 1993.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors, §§ 14-86, 166-419.

10 Am. Jur. Legal Forms 2d, Intoxicating Liquors §§ 151:1 et seq.

CJS. 48 C.J.S., Intoxicating Liquors, §§ 46-55, 60, 61.

§ 67-1-11. Local option election to render chapter effective in county.

(1) Notwithstanding any provision of this chapter, the legalizing provisions of this chapter, except as authorized under Section 67-9-1 and Section 67-1-7(2), shall not be effective, applicable or operative in any county unless and until a local option election shall be called and held in such county in the manner and with the results hereinafter provided.

(2) Upon presentation and filing of a proper petition requesting same signed by at least twenty percent (20%) or fifteen hundred (1,500), whichever number is the lesser, of the qualified electors of the county, it shall be the duty of the board of supervisors to call an election at which there shall be submitted to the qualified electors of the county the question of whether or not the sale, distribution and possession of alcoholic liquors shall be permitted in such county as provided in this chapter. Such election shall be held and conducted by the county election commissioners on a date fixed by the order of the board of supervisors, which date shall not be more than sixty (60) days from the date of the filing of said petition. Notice thereof shall be given by publishing such notice once each week for at least three (3) consecutive weeks in some newspaper published in said county or, if no newspaper be published therein, by such publication in a newspaper in an adjoining county and having a general circulation in the county involved. The election shall be held not earlier than fifteen (15) days from the first publication of such notice.

(3) Said election shall be held and conducted as far as may be possible in the same manner as is provided by law for the holding of general elections. The ballots used thereat shall contain a brief statement of the proposition submitted and, on separate lines, the words "I vote FOR coming out from under the dry law in ________ County ( )" "I vote AGAINST coming out from under the dry law in ________ County ( )" with appropriate boxes in which the voters may express their choice. All qualified electors may vote by marking the ballot with a cross (x) or check ( ) mark opposite the words of their choice.

(4) The election commissioners shall canvass and determine the results of said election, and shall certify same to the board of supervisors which shall adopt and spread upon its minutes an order declaring such results. If, in such election, a majority of the qualified electors participating therein shall vote in favor of the proposition, this chapter shall become applicable and operative in such county and the manufacture, sale, distribution and possession of alcoholic beverages therein shall be lawful to the extent and in the manner permitted hereby. If, on the other hand, a majority of the qualified electors participating in the election shall vote against the proposition, this chapter, except for Section 67-9-1 and 67-1-7(2), shall not become effective and operative in such county and, except as otherwise provided under Section 67-9-1 and 67-1-7(2), all laws prohibiting and regulating the manufacture, sale, distribution and possession of intoxicating liquor shall remain in full force and effect and be administered and vigorously prosecuted therein. In either case, no further election shall be held in said county under the provisions of this chapter for a

period of two (2) years from the date of the prior election and then only upon the filing of a petition requesting same signed by at least twenty percent (20%) or fifteen hundred (1,500), whichever number is the lesser, of the qualified electors of the county as is otherwise provided herein.

SOURCES: Codes, 1942, § 10265-35; Laws, 1966, ch. 540, § 35; Laws, 1996, ch. 417, § 6; Laws, 2004, ch. 397, § 3, eff from and after July 1, 2004.

Cross References — Application of this section to the qualifications for a Class 1, temporary retailer's permit, see § 67-1-51.

Temporary, one-day permit authorizing the sale of alcoholic beverages, see § 67-1-51.

Local option relating to sale of beer and light wines, see §§ 67-3-7, 67-3-9.

JUDICIAL DECISIONS

1. In general.

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. Martin v. State, 501 So. 2d 1124 (Miss. 1987).

ATTORNEY GENERAL OPINIONS

No statute can be found prohibiting use of a single petition for both a referendum on alcoholic beverages under this section and for beer and light wine under § 67-3-7. Lamar, Sept. 13, 2004, A.G. Op. 04-0478.

RESEARCH REFERENCES

ALR. Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 A.L.R.2d 863.

Inclusion or exclusion of first and last days in computing time for giving notice of local option election which must be given a number of days before a known future date. 98 A.L.R.2d 1331.

Application of requirement that newspaper be locally published for official notice publication.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 55 et seq.

10 Am. Jur. Legal Forms 2d, Intoxicating Liquors § 151:30 (petition for local option election).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 11-17 (petitions or applications in local option elections).

CJS. 48 C.J.S., Intoxicating Liquors §§ 92 et seq.

§ 67-1-13. Local option election to render chapter ineffective in county.

(1) When this chapter has been made effective and operative in any county as a result of an election called and held as provided in Section 67-1-11, the same may be made ineffective and inapplicable therein by an election called and held upon a petition filed with the board of supervisors requesting same signed by at least twenty percent (20%) or fifteen hundred (1500), whichever number is the lesser, of the qualified electors of the county as is otherwise provided in Section 67-1-11, all of the provisions of which shall be fully applicable thereto. However, nothing herein shall authorize or permit the

calling and holding of any election under this chapter in any county more often than once every two (2) years. If in such election, a majority of the qualified electors participating therein shall vote against the legalized sale of intoxicating liquor, then the prohibition laws of the State of Mississippi, except as otherwise provided under Section 67-9-1 and 67-1-7(2), shall become applicable in said county.

(2) Notwithstanding an election reinstating the prohibition laws in a political subdivision, the holder of a native wine producer's permit or a native wine retailer's permit is allowed to continue to operate under such permits and to renew such permits. Possession of native wines and personal property related to the activities of the native wine permit holder which would otherwise be unlawful under prohibition shall be allowed subject to regulations of the Alcoholic Beverage Control Division.

SOURCES: Codes, 1942, § 10265-35; Laws, 1966, ch. 540, § 35; Laws, 1984, ch. 411; Laws, 1996, ch. 417, § 7; Laws, 2004, ch. 397, § 4, eff from and after July 1, 2004.

Cross References — Native wine producer's and retailer's permits generally, see § 67-1-51, §§ 67-5-1 et seq.

Local option relating to sale of beer and light wine, see §§ 67-3-7, 67-3-9.

RESEARCH REFERENCES

ALR. Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 A.L.R.2d 863.

Inclusion or exclusion of first and last days in computing time for giving notice of local option election which must be given a number of days before a known future date. 98 A.L.R.2d 1331.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 55 et seq.

10 Am. Jur. Legal Forms 2d, Intoxicating Liquors § 151:30 (petition for local option election).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 11-17 (Petitions or applications in local option elections).

CJS. 48 C.J.S., Intoxicating Liquors §§ 91 et seq.

§ 67-1-14. Local option election to render chapter ineffective in certain municipalities.

[Effective until the date Laws of 2012, ch. 462 is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section will read:]

(1) The legalizing provisions of this chapter may be effective, applicable and operative in any municipality located in a county which has voted against coming out from under the dry law if a local option election shall be called and held in such municipality in the manner and with the results hereinafter provided.

(2)(a) Any municipality in this state having a population of not less than six thousand (6,000) according to the latest federal census, all or any portion of which is located within five (5) miles of the Tennessee-Tombigbee Waterway and which is located in a county which has voted against coming out from under the dry law, may, at an election held for the purpose under the election laws applicable to such municipality, either prohibit or permit, except as otherwise provided under Section 67-9-1, the sale, and the receipt, storage and transportation for the purpose of sale, of alcoholic beverages. An election to determine whether such sale and possession shall be permitted in municipalities wherein its sale and possession is prohibited by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. In like manner, an election to determine whether such sale and possession shall be prohibited in municipalities wherein its sale is permitted by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. No election on either question shall be held by any one (1) municipality more often than once in two (2) years.

Thirty (30) days' notice shall be given to the qualified electors of such municipality, in the manner prescribed by law, upon the question of either permitting or prohibiting such sale and possession, such notice to contain a statement of the question to be voted on at the election. The ballots to be used in the election shall have the following words printed thereon: "For the legal sale of alcoholic liquors," and the words "Against the legal sale of alcoholic liquors" next below. In marking his ballot the voter shall make a cross (X) opposite the words of his choice.

If in the election a majority of the qualified electors voting in the election shall vote "for the legal sale of alcoholic liquors," then the municipal governing authorities shall pass the necessary order permitting the legal sale of such alcoholic beverages in such municipality. If in the election a majority of the qualified electors voting in the election shall vote "against the legal sale of alcoholic liquors," then the municipal governing authorities shall pass the necessary order prohibiting the sale of alcoholic beverages in such municipality.

(b) The provisions of this subsection shall also apply to any municipality having a population of not less than six thousand (6,000) according to the latest federal census, a portion of which is located in a county which has voted against coming out from under the dry law and a portion of which is located in a county which has voted in favor of coming out from under the dry law. For the purpose of determining whether or not such a municipality meets the threshold population of six thousand (6,000) which will qualify the municipality to hold an election under this subsection, the entire population of the municipality shall be considered; however, the petition to hold the election authorized in this subsection shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality who reside in that portion of the municipality located in a county which has voted against coming out from under the dry law and the election shall be held only in that portion of the municipality. In all other respects, the authority for the holding of elections and the manner in which such elections shall be conducted shall be as prescribed in paragraph (a) of this subsection; and, after proper certification of election results, the municipal governing authorities shall pass the appropriate order to permit or prohibit the legal sale of alcoholic beverages in that portion of the municipality located in a county which has voted against coming out from under the dry law.

[Effective from and after the date Laws of 2012, ch. 462 is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section will read:]

(1) The legalizing provisions of this chapter may be effective, applicable and operative in any municipality located in a county which has voted against coming out from under the dry law if a local option election shall be called and held in such municipality in the manner and with the results hereinafter provided.

(2)(a) Any municipality in this state having a population of not less than five thousand (5,000) according to the latest federal census and which is located in a county which has voted against coming out from under the dry law, or any municipality that is a county seat and which is located in a county which has voted against coming out from under the dry law, may, at an election held for the purpose under the election laws applicable to such municipality, either prohibit or permit, except as otherwise provided under Section 67-9-1, the sale, and the receipt, storage and transportation for the purpose of sale, of alcoholic beverages. An election to determine whether such sale and possession shall be permitted in municipalities wherein its sale and possession is prohibited by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. In like manner, an election to determine whether such sale and possession shall be prohibited in municipalities wherein its sale is permitted by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. No election on either question shall be held by any one (1) municipality more often than once in two (2) years.

Thirty (30) days' notice shall be given to the qualified electors of such municipality, in the manner prescribed by law, upon the question of either permitting or prohibiting such sale and possession, such notice to contain a statement of the question to be voted on at the election. The ballots to be used in the election shall have the following words printed thereon: "For the legal sale of alcoholic liquors" and the words "Against the legal sale of alcoholic liquors" next below. In marking his ballot the voter shall make a cross (X) opposite the words of his choice.

If in the election a majority of the qualified electors voting in the election shall vote "for the legal sale of alcoholic liquors," then the municipal governing authorities shall pass the necessary order permitting the legal sale of such alcoholic beverages in such municipality. If in the election a majority of the qualified electors voting in the election shall vote "against the legal sale of alcoholic liquors," then the municipal governing authorities shall pass the necessary order prohibiting the sale of alcoholic beverages in such municipality.

(b) The provisions of this subsection shall also apply to any municipality having a population of not less than six thousand (6,000) according to the latest federal census, a portion of which is located in a county which has voted against coming out from under the dry law and a portion of which is located in a county which has voted in favor of coming out from under the dry law. For the purpose of determining whether or not such a municipality meets the threshold population of six thousand (6,000) which will qualify the municipality to hold an election under this subsection, the entire population of the municipality shall be considered; however, the petition to hold the election authorized in this subsection shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality who reside in that portion of the municipality located in a county which has voted against coming out from under the dry law and the election shall be held only in that portion of the municipality. In all other respects, the authority for the holding of elections and the manner in which such elections shall be conducted shall be as prescribed in paragraph (a) of this subsection; and, after proper certification of election results, the municipal governing authorities shall pass the appropriate order to permit or prohibit the legal sale of alcoholic beverages in that portion of the municipality located in a county which has voted against coming out from under the dry law.

(3) The governing authorities of a municipality that has voted to come out from under the dry laws after the effective date of this act may, by ordinance, provide that alcoholic beverages may be sold in the municipality only by the holder of an on-premises retailer's permit.

SOURCES: Laws, 1990, ch. 569, § 1; Laws, 1993, ch. 445, § 1; Laws, 1996, ch. 417, § 8; Laws, 2012, ch. 462, § 1, eff ________ (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — Laws of 2012, ch. 462, §§ 2 and 3 provide:

"SECTION 2. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United

States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 3. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

Amendment Notes — The 2012 amendment, in the first sentence of (2)(a), substituted 'five thousand (5,000)' for 'six thousand (6,000),' deleted 'all or any portion of which is located within five (5) miles of the Tennessee-Tombigbee Waterway' following 'according to the latest federal census,' and added 'or any municipality that is a county seat...out from under the dry law'; and added (3).

Cross References — Reannouncement of prohibition as law of state unless locally voted ineffective, see § 67-1-3.

JUDICIAL DECISIONS

1. In general.

For purpose of determining whether city's population was sufficiently large to allow city to hold election on whether it could legalize use, possession, and sale of alcohol within city, federal census conducted ten years before election was the controlling census, rather than census that had just been conducted; results from census that had just been conducted were merely preliminary figures and had not yet been made final. Kelly v. City of Aberdeen, 680 So. 2d 208, 56 A.L.R.5th 875 (Miss. 1996).

RESEARCH REFERENCES

ALR. Propriety of using census data as basis for governmental regulations or activities — state cases. 56 A.L.R.5th 171.

Am Jur. 10 Am. Jur. Legal Forms 2d, Intoxicating Liquors § 151:30 (petition for local option election).

§ 67-1-15. Local option elections in counties having two judicial districts.

In any county having two judicial districts, each such judicial district shall be construed to be a political subdivision or subdivision of government on the same basis as a county, and as such, a judicial district will be entitled to all of the rights, privileges, and immunities as a county for the purposes of authorizing the sale of intoxicating liquor therein under the provisions of this chapter.

SOURCES: Codes, 1942, § 10265-35; Laws, 1966, ch. 540, § 35, eff from and after July 1, 1966.

Cross References — Elections to permit sale of beer and light wine, see §§ 67-3-7, 67-3-9.

RESEARCH REFERENCES

ALR. Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election. 25 A.L.R.2d 863.

Inclusion or exclusion of first and last days in computing time for giving notice of local option election which must be given a number of days before a known future date. 98 A.L.R.2d 1331.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 55 et seq.

CJS. 48 C.J.S., Intoxicating Liquors § 93.

§ 67-1-16. Election on question of whether qualified resort to be allowed in municipality; designation of municipality as qualified resort area.

(1)(a) Before an area may be designated by the governing authorities of a municipality as an area in which facilities which are defined as qualified resort areas in Section 67-1-5(o)(iii)5 may be located, an election shall be held, under the election laws applicable to the municipality, on the question of whether qualified resort areas shall be allowed in the municipality. An election to determine whether qualified resort areas shall be allowed in the municipality shall be ordered by the municipal governing authorities, upon presentation to the governing authorities of a petition containing the names of at least twenty percent (20%) of the duly qualified voters of the municipality asking for the election. An election on the question may not be held by the municipality more often than once each year.

(b) Thirty (30) days' notice shall be given to the qualified electors of the municipality, in the manner prescribed by law, on the question of allowing qualified resort areas to be established. The notice shall contain a statement of the question to be voted on at the election. The ballots used in the election shall have the following words printed thereon: "FOR THE ESTABLISHMENT OF QUALIFIED RESORT AREAS," and next below, "AGAINST THE ESTABLISHMENT OF QUALIFIED RESORT AREAS." In marking his ballot, the voter shall make a cross (X) opposite the words of his choice.

(c) Qualified resort areas may be established if a majority of the qualified electors voting in the election vote for such establishment. A qualified resort area may not be established if a majority of the qualified electors voting in the election vote against such establishment.

(2)(a) Before a municipality may be designated as a qualified resort area as defined in Section 67-1-5(o)(iii)6, an election shall be held, under the election laws applicable to the municipality, on the question of whether the municipality shall be a qualified resort area. An election to determine whether the municipality shall be a qualified resort area shall be ordered by the municipal governing authorities, upon presentation to the governing authorities of a petition containing the names of at least twenty percent (20%) of the duly qualified voters of the municipality asking for the election. An election on the question may not be held by the municipality more often than once each year.

(b) Thirty (30) days' notice shall be given to the qualified electors of the municipality, in the manner prescribed by law, on the question of allowing qualified resort areas to be established. The notice shall contain a statement of the question to be voted on at the election. The ballots used in the election shall have the following words printed thereon: "FOR THE ESTABLISHMENT OF A QUALIFIED RESORT AREA," and next below, "AGAINST

THE ESTABLISHMENT OF A QUALIFIED RESORT AREA." In marking his ballot, the voter shall make a cross (X) opposite the words of his choice.

(c) The municipality may be established as a qualified resort area if a majority of the qualified electors voting in the election vote for such establishment. A qualified resort area may not be established if a majority of the qualified electors voting in the election vote against such establishment.

(3)(a) Before an area may be designated a qualified resort area as defined in Section 67-1-5(o)(iii)7, an election shall be held in the municipality in which the area is located under the election laws applicable to the municipality, on the question of whether the area shall be a qualified resort area. An election to determine whether the area shall be a qualified resort area shall be ordered by the municipal governing authorities, upon presentation to the governing authorities of a petition containing the names of at least twenty percent (20%) of the duly qualified voters of the municipality asking for the election. An election on the question may not be held by the municipality more often than once each year.

(b) Thirty (30) days' notice shall be given to the qualified electors of the municipality, in the manner prescribed by law, on the question of allowing qualified resort areas to be established. The notice shall contain a statement of the question to be voted on at the election. The ballots used in the election shall have the following words printed thereon: "FOR THE ESTABLISHMENT OF A QUALIFIED RESORT AREA," and next below, "AGAINST THE ESTABLISHMENT OF A QUALIFIED RESORT AREA." In marking his ballot, the voter shall make a cross (X) opposite the words of his choice.

(c) The area may be established as a qualified resort area if a majority of the qualified electors voting in the election vote for such establishment. A qualified resort area may not be established if a majority of the qualified electors voting in the election vote against such establishment.

SOURCES: Laws, 2009, ch. 558, § 2, eff May 26, 2009 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — On May 26, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this section by Laws of 2009, ch. 558.

§ 67-1-17. Unlawful possession of alcoholic beverages; seizure and sale.

(1) It shall be unlawful for any person to have or possess either alcoholic beverages or personal property intended for use in violating the provisions of this chapter, or regulations prescribed under this chapter, or Chapter 31 of Title 97, Mississippi Code of 1972. No property rights shall exist in any such personal property or alcoholic beverages. All such personal property and alcoholic beverages shall be considered contraband and shall be seized and forfeited to the state of Mississippi.

(2) The following are subject to forfeiture:

(a) All alcoholic beverages which have been manufactured, distilled, distributed, dispensed or acquired in violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972;

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any alcoholic beverage in violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972;

(c) All property which is used, or intended for use, as a container for property described in items (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt, possession or concealment, of property described in item (a) of this subsection which is in excess of six (6) gallons or of property described in item (b) of this subsection; however,

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the conveyance is a leased or rented conveyance, then the confiscating authority shall notify the owner of the conveyance within five (5) days of the confiscation; and

(iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

(e) All money, deadly weapons, books, records and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972.

(3) Property subject to forfeiture may be seized by the alcoholic beverage control division and its agents, local law enforcement officers, Mississippi Highway Patrol officers and other law enforcement personnel charged by Section 67-1-91, with enforcing the provisions of this chapter upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(a) The Seizure is incident to an arrest or a search under a search warrant or an administrative inspection under Section 67-1-37(k);

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter or Chapter 31 of Article 97, Mississippi Code of 1972; or

(c) The alcoholic beverage control division of the state tax commission and other law enforcement personnel described in this subsection have probable cause to believe that the property was used or is intended to be used in violation of this chapter or Chapter 31 of Article 97, Mississippi Code of 1972.

(4) Alcoholic beverages and raw materials seized or detained under the authority of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972, is deemed to be in the custody of the agent or agency so seizing the property and subject only to the orders and decrees of the court having jurisdiction over the property. When such property is seized it may be retained as evidence until final disposition of the cause in which such property is involved, and then the agent or agency so seizing the property shall physically transfer such alcoholic beverage or raw material to the director of the alcoholic beverage control division of the state tax commission together with an appropriate inventory of the items seized. Alcoholic beverages and raw materials seized or detained under the authority of this section shall be disposed of in accordance with the provisions of Section 67-1-18.

(5) Any property other than alcoholic beverages and raw materials seized or detained pursuant to this chapter or Chapter 31 of Title 97, Mississippi Code of 1972, shall be deemed to be in the custody of the agent or agency so seizing the property and subject only to the orders and decrees of the court having jurisdiction over the property. When such property is seized it may be retained as evidence until the final disposition of the cause in which such property is involved. Property seized or detained other than alcoholic beverages or raw materials shall be disposed of in accordance with the provisions of Sections 67-1-93, 67-1-95 and 67-1-97.

SOURCES: Codes, 1942, § 10265-07; Laws, 1966, ch. 540, § 7; Laws, 1971, ch. 347, § 1; Laws, 1984, ch. 424, § 1, eff from and after passage (approved April 23, 1984).

Cross References — Mississippi State Tax Commission, generally, see §§ 27-3-1 et seq.

Disposal of seized property by Mississippi State Tax Commission, see § 67-1-18.

Authority of agents and inspectors of Alcoholic Beverage Control Commission, see § 67-1-31.

Penalty for possession of light wine and beer in dry counties, see § 67-3-13.

Criminal offenses involving intoxicating beverages, see §§ 97-31-5 et seq.

Search warrants and requirements therefor, see §§ 99-27-15 through 99-27-19.

Seizure and destruction of intoxicating liquors, see § 99-27-11.

Jurisdiction over and interposition of claim to possession of seized intoxicating liquors, see § 99-27-13.

JUDICIAL DECISIONS

1. In general.

Sections 67-1-17, 67-1-93, 67-1-95 and 67-1-97, which govern the seizure and disposal of personal property which is in violation of the prohibition law, do not provide for the return of the property prior to a hearing on the forfeiture proceeding. Thus, a defendant was not entitled to the return of her seized car pending the outcome of the forfeiture hearing where the defendant admitted that the intoxicating liquors being transported in her automobile belonged to her, and that she was in the vehicle and was participating in the actual transportation of the contraband. Mississippi State Tax Comm'n v. One (1) 1984 Black Mercury Grand Marquis, 568 So. 2d 707 (Miss. 1990).

Forfeiture applies when the prohibition law is violated using a vehicle for concealing or transporting of liquor in excess of 6 gallons; the burden is upon the State to prove that the forfeiture comes within the statute imposing liability by a preponderance of the evidence. Thus, an automobile which was used by the defendant to transport more than 6 gallons of intoxicating liquor into a "dry" county, was subject to forfeiture following the defendant's conviction for unlawful possession of intoxicating liquor in violation of § 97-31-27. Mississippi State Tax Comm'n v. One (1) 1984 Black Mercury Grand Marquis, 568 So. 2d 707 (Miss. 1990).

Section 67-1-17, providing for the seiazure of unlawful alcoholic beverages, violates federal due process requirements by failing to provide for reasonable notice to the owner of a seized vehicle prior to its forfeiture. However, notice to the owner of a seized vehicle advising him of the pendency of a subsequent forfeiture proceeding, provided by § 99-27-11, and the owner's opportunity to interpose a claim to the seized property prior to its forfeiture, provided by § 99-27-13, satisfy due process notice and hearing requirements. Holladay v. Roberts, 425 F. Supp. 61 (N.D. Miss. 1977).

RESEARCH REFERENCES

ALR. Forfeiture of property for unlawful use before trial of individual offender. 3 A.L.R.2d 738.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding. 8 A.L.R.3d 473.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 A.L.R.3d 172.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 14, 276, 396 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 141-145 (seizure and forfeiture of intoxicating liquors).

CJS. 48 C.J.S., Intoxicating Liquors §§ 53 et seq., 361-368.

48A C.J.S., Intoxicating Liquors §§ 553 et seq.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

§ 67-1-18. Disposal of seized property by State Tax Commission.

Any alcoholic beverage or raw material seized under the authority of this chapter or Chapter 31 of Title 97, Mississippi Code of 1972, shall be submitted to the custody of the Mississippi State Tax Commission for disposition.

The commission shall not dispose of any alcoholic beverage or raw material without first having a hearing with reasonable notice to all individuals having an interest in said property and an opportunity for them to appear and establish their right or claim to the property. Upon hearing the evidence, the commission shall issue its order requiring the alcoholic beverages or raw materials to be released to an interested party, sold for the benefit of the state or destroyed.

If the commission orders the property, other than alcoholic beverages, sold, then the same shall be sold to the highest bidder, such bidder being any person, firm or government agency. The offer for sale shall be made to not less than three (3) qualified prospective buyers, by mailing them an invitation to bid, which shall describe the property, terms of sale, method of delivery, manner of bidding and fixing a time of not more than fifteen (15) days from the date of invitation for opening of bids received by the commission.

All bids and payment shall be made in the manner as prescribed by the commission. Bids, after opening, shall be subject to public inspection.

If the commission orders the sale of seized alcoholic beverages, it may place such alcoholic beverages in the state inventory to be sold to authorized retailers in the same manner as other alcoholic beverages in the state inventory are sold.

SOURCES: Laws, 1984, ch. 424, § 2, eff from and after passage (approved April 23, 1984).

Cross References — Mississippi State Tax Commission generally, see §§ 27-3-1 et seq.

Seizure and disposal of alcoholic beverages and raw materials and retention for use as evidence, see § 67-1-17.

Sale of forfeited property other than alcoholic beverages or raw materials at public auction, see § 67-1-97.

Criminal offenses involving intoxicating beverages, see §§ 97-31-5 et seq.

Seizure and destruction of intoxicating liquors, see § 99-27-11.

Interposition of claim to possession of seized intoxicating liquors and jurisdiction thereover, see § 99-27-13.

RESEARCH REFERENCES

ALR. Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding. 8 A.L.R.3d 473.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 A.L.R.3d 172.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 14 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 53 et seq.

§ 67-1-19. Administration of chapter.

The administration and enforcement of this chapter shall be vested in the Department of Revenue. There is hereby created the Alcoholic Beverage Control Division within and as a part of the Department of Revenue.

SOURCES: Codes, 1942, § 10265-08; Laws, 1966, ch. 540, § 8; Laws, 1980, ch. 561, § 13; Laws, 2009, ch. 492, § 127, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see §§ 27-3-1 et seq.

JUDICIAL DECISIONS

1. In general.

The Eleventh Amendment barred a federal courts suit for damages against the alcoholic beverage control division, a nonautonomous part of the state tax commission, pursuant to § 67-1-19, where any damages awarded against the commission or the alcoholic beverage control division necessarily would be payable from the state treasury. Holladay v. Roberts, 425 F. Supp. 61 (N.D. Miss. 1977).

RESEARCH REFERENCES

ALR. Immunity from suit of governmental liquor control agency. 9 A.L.R.2d 1292.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 14 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 46 et seq., 360.

§ 67-1-21. Repealed.

Repealed by Laws of 2009, ch. 492, § 143, effective from and after July 1, 2010.

§ 67-1-21. [Codes 1942, § 10265-09; Laws, 1966, ch. 540, § 9, eff from and after July 1, 1966.]

Editor's Note — Former § 67-1-21 provided the duties of the secretary of the commission.

Laws of 2009, ch. 492, § 143, effective from and after July 1, 2010, provides:

"SECTION 143. Sections 27-3-11, 27-3-21, 27-3-25, 27-3-27, 27-3-32, 27-3-55, 27-3-75, and 67-1-21, Mississippi Code of 1972, are repealed."

§ 67-1-23. Appointment of division personnel; oath.

The Commissioner of Revenue of the Department of Revenue shall appoint a director of the division, and may appoint or employ such agents, inspectors, clerks and other employees for such division as may be necessary to carry out the provisions of this chapter or to perform the duties and exercise the powers conferred by this chapter upon the department. The Commissioner of Revenue shall have the authority to employ, compensate, terminate, suspend with or without pay, promote, demote, transfer or reprimand the director, agents, inspectors, clerks and other employees of the division. The director and all permanent employees of the division shall devote their full time to the duties of their respective offices.

SOURCES: Codes, 1942, § 10265-10; Laws, 1966, ch. 540, § 10; Laws, 1980, ch. 561, § 14; Laws, 2009, ch. 492, § 128, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Administration and enforcement of the local option Alcoholic Beverage Control Law by the State Tax Commission, see § 27-3-31.

Department of revenue generally, see §§ 27-3-1 et seq.

Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

§ 67-1-25. Qualifications of personnel.

No person shall be appointed director, agent or inspector for the commission under this chapter who is not a citizen of the United States. No director, agent, inspector or other employee shall be appointed under this chapter who has been convicted of any violation of any federal or state law concerning the manufacture, sale or possession of alcoholic liquor prior or subsequent to July 1, 1966, or who has paid a fine or penalty in settlement of any prosecution against him for any violation of such laws or shall have forfeited his bond to appear in court to answer charges for any such violation, nor shall any person be so appointed who has been convicted of a felony in any state or federal court. No person appointed or employed by the commission under this chapter may, directly or indirectly, individually or as a member of a partnership or limited liability company, or as a shareholder of a corporation, have any interest whatsoever in the manufacture, sale or distribution of alcoholic liquor, or receive any compensation or profit therefrom, or have any interest whatsoever in the purchases or sales made by the persons authorized by this chapter to purchase or to sell alcoholic liquor.

This section shall not prevent any person appointed or employed by the commission from purchasing and keeping in his possession for the use of himself or members of his family or guests any alcoholic liquor which may be purchased or kept by any other person by virtue of this chapter.

SOURCES: Codes, 1942, § 10265-12; Laws, 1966, ch. 540, § 12; Laws, 2006, ch. 529, § 8; Laws, 2007, ch. 462, § 1, eff from and after passage (approved Mar. 26, 2007.)

§ 67-1-27. Bonds of personnel.

Before entering into the duties of his office, the director, and such other agents, inspectors and employees appointed under the provisions of this chapter as the commission shall designate, shall give surety bond, with some company authorized to do business in the State of Mississippi and approved by the State Insurance Commissioner, appearing thereon as surety, in a sum of not less than five thousand dollars, conditioned upon the faithful performance of their duties. The premiums for such bonds shall be paid out of funds appropriated for the support of the commission.

SOURCES: Codes, 1942, § 10265-14; Laws, 1966, ch. 540, § 14, eff from and after July 1, 1966.

§ 67-1-29. Compensation of personnel.

The director, secretary, agents, inspectors, clerks and employees of the commission appointed under this chapter shall receive such reasonable compensation as may be fixed by the commission. The director and all agents, inspectors, clerks, and other employees shall be reimbursed for all actual and necessary traveling and other expenses and disbursements incurred or made by them in the discharge of their official duties. Such compensation and expenses shall be paid from funds appropriated for the support of the commission.

SOURCES: Codes, 1942, § 10265-15; Laws, 1966, ch. 540, § 15, eff from and after July 1, 1966.

§ 67-1-31. Law enforcement authority of agents and inspectors; liability of members of commission for acts or omissions of agents or inspectors.

The commission shall issue to all agents and inspectors appointed under this chapter a written certificate of appointment under the seal of said commission, of which judicial notice shall be taken by all courts of this state. Such agents and inspectors are hereby declared to be police officers in enforcing the provisions of this chapter, and in the performance of their duties such employees shall have the authority to bear arms, to make arrests, to make searches and seizures under this chapter, and to serve any protest, notice or order connected with the enforcement of this chapter by whatever officer or authority of court issued. The members of the commission shall not be personally liable to any person on account of any act, neglect or omission of any such agent or inspector.

The powers and duties of the agents and inspectors shall include, in addition to all others prescribed by law the following powers: to arrest, without warrant, any person committing or attempting to commit a misdemeanor, felony or a breach of the peace within his presence or view, and to pursue and so arrest any person committing such an offense to and at any place in the state where the person may go or be; and to aid and assist any law enforcement officer, if requested. Nothing herein shall be construed as granting agents and inspectors of the Alcoholic Beverage Control Division of the State Tax Commission general police powers.

SOURCES: Codes, 1942, § 10265-11; Laws, 1966, ch. 540, § 11; Laws, 1982, ch. 384; Laws, 1995, ch. 350, § 1, eff from and after passage (approved March 14, 1995).

Cross References — Agent's custody of alcoholic beverages and raw materials seized for violation of alcoholic beverages control law, see § 67-1-17.

Other persons authorized to carry weapons, see §§ 97-37-7, 97-37-9.

JUDICIAL DECISIONS

1. In general.

An agent of the alcoholic beverage control division did not have authority to serve a search warrant issued for the purpose of making a search for illegal gambling equipment, since such agents have no police powers other than those expressly granted by the provisions of the local option alcoholic beverage control law. Presley v. State, 229 So. 2d 830 (Miss. 1969).

Inasmuch as Code 1942, § 10265-05 excludes from the definition of "alcoholic beverage" beer and wine of not more than 4 percent of alcohol by weight the authority conferred upon agents of the alcoholic beverage commission under this section and Code 1942, § 10265-17 does not authorize and empower them to check a retailer's beer license to see whether it was in date or to inspect beer stock to determine whether it was Mississippi-taxed beer. Jolliff v. State, 215 So. 2d 234 (Miss. 1968), but see Cumbest v. Commissioners of Election, 416 So. 2d 683 (Miss. 1982).

ATTORNEY GENERAL OPINIONS

The law enforcement authority of the agents and inspectors of the Alcoholic Beverage Control Division of the State Tax Commission is limited to the authority set forth in Section 67-1-31, which includes the authority to aid and assist any law enforcement officer, if requested. Carter, December 13, 1996, A.G. Op. #96-0852.

RESEARCH REFERENCES

ALR. What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution. 81 A.L.R. Fed. 331.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 377 et seq.

CJS. 48A C.J.S., Intoxicating Liquors §§ 551 et seq.

§ 67-1-33. Gratuities and gifts to members of the Board of Tax Appeals, Commissioner of Revenue of Department of Revenue or Department of Revenue and employees prohibited.

(1) No member of the Board of Tax Appeals, Commissioner of Revenue of the Department of Revenue, or person appointed or employed by the department under this chapter shall solicit, accept or receive any gift, gratuity,

emolument or employment from any person subject to the provisions of this chapter, or from any officer, agent or employee thereof.

(2) No member of the Board of Tax Appeals, the Commissioner of Revenue of the Department of Revenue, or person appointed or employed by the department under this chapter shall solicit, request from or recommend, directly or indirectly, to any person subject to the provisions of this chapter, or to any officer, agent or employee thereof, the appointment of any person to any place or position.

(3) Every person subject to the provisions of this chapter, and every officer, agent or employee thereof, is hereby forbidden to offer to any member of the Board of Tax Appeals, to the Commissioner of Revenue or to any person appointed or employed by the department under this chapter any gift, gratuity, emolument or employment.

(4) If any member of the Board of Tax Appeals, the Commissioner of Revenue or any person appointed or employed by the department under this chapter shall violate any of the provisions of this section, he shall be removed from the office or employment held by him.

(5) Every person violating the provisions of this section shall be guilty of a misdemeanor.

(6) For purposes of this provision, the terms “gift,” “gratuity,” “emolument” and “employment” do not include the payment of expenses associated with social occasions afforded public servants or any other benefit that does not come within the definition of “pecuniary benefit” as defined in Section 25-4-103.

SOURCES: Codes, 1942, § 10265-13; Laws, 1966, ch. 540, § 13; Laws, 2009, ch. 492, § 129, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

“SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals.”

Cross References — Department of revenue generally, see §§ 27-3-1 et seq.

Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

Board of tax appeals, see §§ 27-4-1 et seq.

RESEARCH REFERENCES

ALR. Criminal offense of bribery as affected by lack of authority of state public officer or employee. 73 A.L.R.3d 374.

§ 67-1-35. Official seal of the Alcoholic Beverage Control Division of the Department of Revenue.

The department may, for authentication of records, process and proceedings, adopt, keep and use a seal for the Alcoholic Beverage Control Division of the Department of Revenue, of which seal judicial notice shall be taken in all courts of this state. Any process, notice or other paper which the department may be authorized by law to issue under this chapter shall be deemed sufficient if signed by the director and authenticated by such seal. All acts, orders, proceedings, rules, regulations, entries, minutes, and other records of the department in connection with this chapter, and all reports and documents filed with it under this chapter, may be proved in any court of this state by a copy thereof certified to by the director with the seal of the division affixed.

SOURCES: Codes, 1942, § 10265-16; Laws, 1966, ch. 540, § 16; Laws, 2009, ch. 492, § 130, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see §§ 27-3-1 et seq.

Powers and duties of the department of revenue with respect to the alcoholic beverage control division of the department of revenue, see § 67-1-37.

§ 67-1-37. Powers and duties of Department of Revenue with respect to Alcoholic Beverage Control Division.

(1) The Department of Revenue, under its duties and powers with respect to the Alcoholic Beverage Control Division therein, shall have the following powers, functions and duties:

(a) To issue or refuse to issue any permit provided for by this chapter, or to extend the permit or remit in whole or any part of the permit monies when the permit cannot be used due to a natural disaster or act of God.

(b) To revoke, suspend or cancel, for violation of or noncompliance with the provisions of this chapter, or the law governing the production and sale of native wines, or any lawful rules and regulations of the department issued hereunder, or for other sufficient cause, any permit issued by it under the provisions of this chapter. The department shall also be authorized to suspend the permit of any permit holder for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a permit suspended for that purpose, shall be governed by Section 93-11-157 or Section 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or Section 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or Section 93-11-163, as the case may be, shall control.

(c) To prescribe forms of permits and applications for permits and of all reports which it deems necessary in administering this chapter.

(d) To fix standards, not in conflict with those prescribed by any law of this state or of the United States, to secure the use of proper ingredients and methods of manufacture of alcoholic beverages.

(e) To issue rules regulating the advertising of alcoholic beverages in the state in any class of media and permitting advertising of the retail price of alcoholic beverages.

(f) To issue reasonable rules and regulations, not inconsistent with the federal laws or regulations, requiring informative labeling of all alcoholic beverages offered for sale within this state and providing for the standards of fill and shapes of retail containers of alcoholic beverages; however, such containers shall not contain less than fifty (50) milliliters by liquid measure.

(g) Subject to the provisions of subsection (3) of Section 67-1-51, to issue rules and regulations governing the issuance of retail permits for premises located near or around schools, colleges, universities, churches and other public institutions, and specifying the distances therefrom within which no such permit shall be issued. The Alcoholic Beverage Control Division shall not issue a package retailer's or on-premises retailer's permit for the sale or consumption of alcoholic beverages in or on the campus of any public school, community or junior college, college or university.

(h) To adopt and promulgate, repeal and amend, such rules, regulations, standards, requirements and orders, not inconsistent with this chapter or any law of this state or of the United States, as it deems necessary to control the manufacture, importation, transportation, distribution and sale of alcoholic liquor, whether intended for beverage or nonbeverage use in a manner not inconsistent with the provisions of this chapter or any other statute, including the native wine laws.

(i) To call upon other administrative departments of the state, county and municipal governments, county and city police departments and upon prosecuting officers for such information and assistance as it may deem necessary in the performance of its duties.

(j) To prepare and submit to the Governor during the month of January of each year a detailed report of its official acts during the preceding fiscal year ending June 30, including such recommendations as it may see fit to make, and to transmit a like report to each member of the Legislature of this state upon the convening thereof at its next regular session.

(k) To inspect, or cause to be inspected, any premises where alcoholic liquors intended for sale are manufactured, stored, distributed or sold, and to examine or cause to be examined all books and records pertaining to the business conducted therein.

(*l*) To investigate the administration of laws in relation to alcoholic liquors in this and other states and any foreign countries, and to recommend from time to time to the Governor and through him to the Legislature of this state such amendments to this chapter, if any, as it may think desirable.

(m) To designate hours and days when alcoholic beverages may be sold in different localities in the state which permit such sale.

(n) To assign employees to posts of duty at locations where they will be most beneficial for the control of alcoholic beverages and to take any other action concerning persons employed under this chapter as authorized by law and taken in accordance with the rules, regulations and procedures of the State Personnel Board.

(o) To enforce the provisions made unlawful by Sections 67-3-13, 67-3-15, 67-3-53, 67-3-57 and 67-3-70.

(p) To delegate its authority under this chapter to the Alcoholic Beverage Control Division, its director or any other officer or employee of the department that it deems appropriate.

(2) No alcoholic beverage shall be sold or consumed at any public athletic event at any public school, community or junior college, college or university.

SOURCES: Codes, 1942, § 10265-17; Laws, 1966, ch. 540, § 17; Laws, 1970, ch. 549, § 1; Laws, 1971, ch. 358, § 1; Laws, 1976, ch. 467, § 14; Laws, 1988, ch. 383, § 1; Laws, 1988, ch. 562, § 1; Laws, 1992, ch. 459, § 1; Laws, 1996, ch. 507, § 15; Laws, 1997, ch. 558, § 2; reenacted and amended, Laws, 1998, ch. 520, § 1; Laws, 2002, ch. 570, § 6; Laws, 2003, ch. 392, § 1; Laws, 2005, ch. 462, § 1; Laws, 2006, ch. 529, § 3; Laws, 2007, ch. 462, § 3; Laws, 2009, ch. 492, § 131; Laws, 2011, ch. 379, § 1, eff from and after July 1, 2011.

Editor's Note — For provisions of this section in effect from and after July 1, 1988, until January 1, 1989, see Laws, 1988, ch. 562, § 1.

Laws of 1998, ch. 520, § 5, provides as follows:

"SECTION 5. Section 5, Chapter 558, Laws of 1997, which repeals, effective July 1, 1998, Sections 67-1-37, 67-3-31, 67-3-37 and 67-3-75, Mississippi Code of 1972, is repealed."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2011 amendment deleted the version effective from and after July 1, 2011.

Cross References — Department of revenue generally, see §§ 27-3-1 et seq.

Annual privilege taxes for permits, see § 27-71-5.

Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

Alcoholic beverage permits, generally, see §§ 67-1-51 et seq.

Application of this section to the qualifications for a Class 1 or Class 2 Temporary retailer's permit, see § 67-1-51.

Temporary, one-day permit authorizing the sale of alcoholic beverages, see § 67-1-51.

Temporary permit for those seeking to transfer either a package retailer's permit or an on-premises retailer's permit, see § 67-1-51.

Sales after hours, see § 67-3-53.

Native Wines Law, see §§ 67-5-1 et seq.

Possession or sale of light wine or beer before permit secured or during time of revocation or suspension prohibited, see § 67-3-57.

JUDICIAL DECISIONS

1. In general.
1.5. Due process.

1. In general.

Sufficient-cause language within subsection (b) was an express grant of power that did not grant to the State Tax Commission arbitrary and capricious discretion; the commission was given authority to revoke, suspend or cancel a permit for noncompliance or other sufficient cause, and there was sufficient cause to find the business to have disregarded the authority and power of the Alcohol Beverage Control division. D. J. Koenig & Assocs. v. Miss. State Tax Comm'n, 838 So. 2d 246 (Miss. 2003).

Business was given due process consisting of notice and an opportunity to be heard; the statute was discussed in the first hearing, and this put the owner on notice that it was at issue in the second hearing. D. J. Koenig & Assocs. v. Miss. State Tax Comm'n, 838 So. 2d 246 (Miss. 2003).

Chancery Court jurisdiction in case under local option alcoholic beverage control law (§§ 67-1-1 et seq.) is appellate only; Chancery Court has no original authority to initially hear and determine merits of case under law and may not issue order quashing subpoena duces tecum issued by Alcoholic Beverage Control Division. Mississippi State Tax Comm'n v. Elks Lodge No. 553, 471 So. 2d 1225 (Miss. 1985).

A chancery court order, removing the disabilities of a 19-year-old woman and empowering her to engage "in any profession or avocation which she could do if she were 21 years of age", as decreed pursuant to Code 1972 § 93-19-9, would take precedence over an Alcoholic Beverage Control Division regulation prohibiting the employment of persons under age 21 from the handling of alcoholic beverages, since the regulatory authority vested in the Division by Code 1972 § 67-1-37(h) requires that such regulations not be inconsistent with other laws of the state. Mississippi State Tax Comm'n v. Reynolds, 351 So. 2d 326 (Miss. 1977).

Although this section, gives the state tax commission authority to designate hours when alcoholic beverages may be sold indifferent localities in the state which permit such sale, and the state tax commission did in fact approve the sale of alcoholic beverages in a certain municipality by hotels, restaurants, and clubs between the hours of 9 o'clock a.m. and 2 o'clock a.m. on all days except Sundays and election days, the allegation in a restaurant owners' bill of complaint alleging that the sheriff of the county had publicly stated that he would repeatedly arrest the complainant if he continued to sell alcoholic beverages between midnight and 2 a.m. was not sufficient to show that complainant's property rights were in danger of repeated arrest and prosecution by the sheriff, and was insufficient to support an injunction. Watkins v. Navarrette, 227 So. 2d 853 (Miss. 1969).

The state tax commission not only has the authority as a legislative administrative agency to hold a hearing upon the application of a county board of supervisors to determine "resort areas" but it was the commission's duty to hold a public hearing upon the application; and a failure to conduct a hearing which is required by statute would have been unlawful, arbitrary, and capricious. Graves v. Rhoden, 218 So. 2d 424 (Miss. 1969).

Inasmuch as Code 1942, § 10265-05 excludes from the definition of "alcoholic beverage" beer and wine of not more than 4 percent of alcohol by weight, the authority conferred upon agents of the alcoholic beverage commission under this section and Code 1942, § 10265-11 does not authorize and empower them to check a retailer's beer license to see whether it was in date or to inspect beer stock to determine whether it was Mississippi-taxed beer. Jolliff v. State, 215 So. 2d 234 (Miss. 1968), but see Cumbest v. Commissioners of Election, 416 So. 2d 683 (Miss. 1982).

1.5. Due process.

Due process was afforded the business owner pursuant to the statute via notice and an opportunity to be heard. D. J. Koenig & Assocs. v. Miss. State Tax Comm'n, 838 So. 2d 246 (Miss. 2003).

RESEARCH REFERENCES

ALR. Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place. 39 A.L.R.4th 668.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 87 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 126 et seq.

§ 67-1-39. Appeals from Board of Tax Appeals orders.

Any appeal from an order of the Board of Tax Appeals regarding an action taken under this chapter shall be filed without supersedeas to the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the appellant is the department, or to the county of the domicile of any other appellant. Any such appeal shall be based on the record made before the Board of Tax Appeals and shall be filed within thirty (30) days from the date of the order being appealed. There may be an appeal therefrom to the Supreme Court as in other cases provided, but it shall be without supersedeas on the order of the Board of Tax Appeals to them made and finally determined either by the chancery court or the Supreme Court. Actions taken by the department in suspending a permit when required by Section 93-11-157 or 93-11-163 are not actions resulting in an order from which an appeal may be taken under this section. Any appeal of a permit suspension that is required by Section 93-11-157 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Codes, 1942, § 10265-17; Laws, 1966, ch. 540, § 17; Laws, 1970, ch. 549, § 1; Laws, 1971, ch. 358, § 1; Laws, 1996, ch. 507, § 16; Laws, 2009, ch. 492, § 132, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Annual privilege taxes and other fees; permits; penalties; prohibition of alcoholic beverages in public places; see § 27-71-5.

Department of revenue generally, see §§ 27-3-1 et seq.

Board of tax appeals, see §§ 27-4-1 et seq.

Issuance and/or renewal of alcoholic beverage permits based on decision of board of tax appeals does not bar or estop department from appealing decision under this section, see § 67-1-63.

JUDICIAL DECISIONS

1. In general.

Chancery court jurisdiction in case under local option alcoholic beverage control law (§§ 67-1-1 et seq.) is appellate only; chancery court has no original authority to initially hear and determine merits of case under law and may not issue order quashing subpoena duces tecum issued by Alcoholic Beverage Control Division. Mississippi State Tax Comm'n v. Elks Lodge No. 553, 471 So. 2d 1225 (Miss. 1985).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 128, 130 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 171 et seq.

§ 67-1-41. Commission as a wholesale distributor and seller of alcoholic beverages; exception to commission's exclusive right to sell at wholesale.

(1) The State Tax Commission is hereby created a wholesale distributor and seller of alcoholic beverages, not including malt liquors, within the State of Mississippi. It is granted the sole right to import and sell intoxicating liquors at wholesale within the state, and no person who is granted the right to sell, distribute or receive intoxicating liquors at retail shall purchase any intoxicating liquors from any source other than the commission except as authorized in subsections (4) and (9). The commission may establish warehouses, purchase intoxicating liquors in such quantities and from such sources as it may deem desirable and sell the intoxicating liquors to authorized permittees within the state including, at the discretion of the commission, any retail distributors operating within any military post or qualified resort areas within the boundaries of the state, keeping a correct and accurate record of all such transactions and exercising such control over the distribution of alcoholic beverages as seem right and proper in keeping with the provisions or purposes of this chapter.

(2) No person for the purpose of sale shall manufacture, distill, brew, sell, possess, export, transport, distribute, warehouse, store, solicit, take orders for, bottle, rectify, blend, treat, mix or process any alcoholic beverage except in accordance with authority granted under this chapter, or as otherwise provided by law for native wines.

(3) No alcoholic beverage intended for sale or resale shall be imported, shipped or brought into this state for delivery to any person other than as provided in this chapter, or as otherwise provided by law for native wines.

(4) The commission may promulgate rules and regulations which authorize on-premises retailers to purchase limited amounts of alcoholic beverages from package retailers and for package retailers to purchase limited amounts of alcoholic beverages from other package retailers. The commission shall develop and provide forms to be completed by the on-premises retailers and the package retailers verifying the transaction. The completed forms shall be forwarded to the commission within a period of time prescribed by the commission.

(5) The commission may promulgate rules which authorize the holder of a package retailer's permit to permit individual retail purchasers of packages of alcoholic beverages to return, for exchange, credit or refund, limited amounts of original sealed and unopened packages of alcoholic beverages purchased by the individual from the package retailer.

(6) The commission shall maintain all forms to be completed by applicants necessary for licensure by the commission at all district offices of the commission.

(7) The commission may promulgate rules which authorize the manufacturer of an alcoholic beverage or wine to import, transport and furnish or give a sample of alcoholic beverages or wines to the holders of package retailer's

permits, on-premises retailer's permits, native wine retailer's permits and temporary retailer's permits who have not previously purchased the brand of that manufacturer from the commission. For each holder of the designated permits, the manufacturer may furnish not more than five hundred (500) milliliters of any brand of alcoholic beverage and not more than three (3) liters of any brand of wine.

(8) The commission may promulgate rules disallowing open product sampling of alcoholic beverages or wines by the holders of package retailer's permits and permitting open product sampling of alcoholic beverages by the holders of on-premises retailer's permits. Permitted sample products shall be plainly identified "sample" and the actual sampling must occur in the presence of the manufacturer's representatives during the legal operating hours of on-premises retailers.

(9) The commission may promulgate rules and regulations that authorize the holder of a research permit to import and purchase limited amounts of alcoholic beverages from importers, wineries and distillers of alcoholic beverages or from the commission. The commission shall develop and provide forms to be completed by the research permittee verifying each transaction. The completed forms shall be forwarded to the commission within a period of time prescribed by the commission. The records and inventory of alcoholic beverages shall be open to inspection at any time by the Director of the Alcoholic Beverage Control Division or any duly authorized agent.

SOURCES: Codes, 1942, § 10265-18; Laws, 1966, ch. 540, § 18; Laws, 1976, ch. 467, § 15; Laws, 1988, ch. 397, § 1; Laws, 1990, ch. 479, § 1; Laws, 1992, ch. 574, § 1; Laws, 1994, ch. 538, § 2; Laws, 1998, ch. 413, § 1; Laws, 1999, ch. 408, § 1; Laws, 2006, ch. 352, § 3; Laws, 2006, ch. 529, § 4, eff from and after passage (approved Apr. 3, 2006.)

Joint Legislative Committee Note — Section 4 of ch. 529, Laws of 2006, effective from and after passage (approved April 3, 2006), amended this section. Section 3 of ch. 352, Laws of 2006, effective July 1, 2006, (approved March 13, 2006), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of legislation ratified the integration of these amendments as consistent with the legislative intent at the May 31, 2006, meeting of the Committee.

Cross References — Prohibitions with respect to alcoholic beverages generally, with the exception of storage in private bonded warehouses pursuant to this section, see § 67-1-9.

Inapplicability of the penalty provisions under certain circumstances to the purchase or receipt of intoxicating liquor from a source other than the commission, see § 67-1-43.

Native Wines Law, see §§ 67-5-1 et seq.

Provision making it unlawful for a person to possess or sell intoxicating liquor, see § 97-31-27.

JUDICIAL DECISIONS

1. In general.

Wholesale markup applied to liquor sold to federal military installations in Mississippi constituted a sales tax, the legal incidence of which rested upon instrumentalities of the United States as the purchasers, and therefore the markup was unconstitutional as a tax imposed upon the United States and its instrumentalities. Since the legal incidence of the tax was upon the United States, the federal immunity with respect to sales of liquor to the two exclusively federal enclaves was preserved by § 107(a) of the Buck Act (4 USCS §§ 105-110); The Twenty-First Amendment did not abolish federal immunity with respect to taxes on the sales of liquor to the concurrent jurisdiction bases. United States v. Mississippi Tax Comm'n, 421 U.S. 599, 95 S. Ct. 1872, 44 L. Ed. 2d 404 (1975).

Nothing occurs within a state giving it jurisdiction to regulate the initial wholesale transaction with respect to the initial sale and delivery of liquor by suppliers to military facilities located in exclusively federal enclaves when the goods are ordered by officers' clubs and other nonappropriated fund activities and are then delivered within military bases over which the United States claims exclusive jurisdiction. United States v. Mississippi Tax Comm'n, 412 U.S. 363, 93 S. Ct. 2183, 37 L. Ed. 2d 1 (1973), conformed to, 378 F. Supp. 558 (S.D. Miss. 1974), 421 U.S. 599, 95 S. Ct. 1872, 44 L. Ed. 2d 404 (1975).

An indictment originally charging a violation of subsection (2) of this section by the unlawful and wilful storage of alcoholic beverages without authority of law could not thereafter be validly amended to include therein several essential elements of the offense sought to be charged, such as the holding of valid election whereby the county voted out from under the prohibition law and that the defendant did not possess a permit from the State of Mississippi authorizing him to store alcoholic liquors. Price v. State, 227 So. 2d 858 (Miss. 1969).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 188 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 285-287, 289-292.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-1-43. Obtaining intoxicants from source other than commission; penalty.

Any authorized retail distributor who shall purchase or receive intoxicating liquor from any source except from the commission, unless authorized by rules and regulations of the commission promulgated under subsection (4) of Section 67-1-41, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Five Hundred Dollars ($500.00), nor more than Two Thousand Dollars ($2,000.00), to which may be added imprisonment in the county jail for not more than six (6) months. Any authorization of such person to sell intoxicating beverages may be revoked as provided by law.

SOURCES: Codes, 1942, § 10265-18; Laws, 1966, ch. 540, § 18; Laws, 1976, ch. 467, § 16; Laws, 1988, ch. 397, § 2; Laws, 2006, ch. 352, § 4, eff from and after July 1, 2006.

Cross References — Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

Native Wines Law, see §§ 67-5-1 et seq.

Rule making it unlawful to manufacture intoxicating liquors, see § 97-31-21.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The manufacture, possession or transportation of untaxed liquor is a crime involving dishonesty or false statement under Rule 609(a)(2), Miss. R. Ev., which permits impeachment of a witness' testimony by evidence of conviction of such a crime. Johnson v. State, 529 So. 2d 577 (Miss. 1988).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 188 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 285-287, 289-292.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-1-45. Selling intoxicants to source other than commission; penalty.

No manufacturer, rectifier, or distiller of intoxicating liquor shall sell or attempt to sell any such intoxicating liquor, except malt liquor, within the State of Mississippi, except to the commission, or to the holder of a research permit as provided in Section 67-1-41. A producer of native wine may sell native wines to the commission or to consumers at the location of the native winery or its immediate vicinity.

Any violation of this section by any manufacturer, rectifier, or distiller shall be punished by a fine of not less than Five Hundred Dollars ($500.00), and not more than Two Thousand Dollars ($2,000.00), to which may be added imprisonment in the county jail not to exceed six (6) months.

SOURCES: Codes, 1942, § 10265-18; Laws, 1966, ch. 540, § 18; Laws, 1976, ch. 467, § 17; Laws, 1994, ch. 538, § 3; Laws, 2006, ch. 352, § 5, eff from and after July 1, 2006.

Cross References — Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

Native Wines Law, see §§ 67-5-1 et seq.

Provision making it unlawful to possess or sell intoxicating liquors, see § 97-31-27.

JUDICIAL DECISIONS

1. In general.

The manufacture, possession or transportation of untaxed liquor is a crime involving dishonesty or false statement under Rule 609(a)(2), Miss. R. Ev., which permits impeachment of a witness' testimony by evidence of conviction of such a crime. Johnson v. State, 529 So. 2d 577 (Miss. 1988).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 188 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 285-287, 289-292.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-1-47. Distillers and distributors dealing with commission shall register with Secretary of State.

All distillers or distributors having contracts with the State Tax Commission for the sale of alcoholic beverages to the State Tax Commission, before making delivery of any merchandise to the State Tax Commission, shall register with the Secretary of State giving their name, address, name of all local agents and any other pertinent information which may be required by the Secretary of State and appointing an agent for the service of process within the State of Mississippi.

SOURCES: Codes, 1942, § 10265-41; Laws, 1968, ch. 526, § 1, eff and in force thirty (30) days after approval (approved August 7, 1968).

§ 67-1-49. Distillers and distributors dealing with commission shall file statements of salary expenses.

All distillers or distributors having contracts with the State Tax Commission for the sale of alcoholic beverages to said commission, shall, on or before February 1st of each year, file a statement, under oath, with the State Tax Commission and with the Secretary of State, listing the names and addresses of each person, firm or corporation in Mississippi to whom or which said distiller or distributor shall have paid or agreed to pay any fee, retainer, salary, or remuneration, during the preceding year, together with a statement of the purpose for such payment. Failure to file such statement shall constitute grounds for the commission to suspend the right of the distiller or distributor to sell to said commission until such time as said statement shall be filed.

SOURCES: Codes, 1942, § 10265-42; Laws, 1968, ch. 526, § 2, eff and in force thirty (30) days after approval (approved August 7, 1968).

§ 67-1-51. Permits; distance regulations; prohibition on ownership of more than one package retailer's permit; prohibition on ownership of additional permits by persons living in same household.

(1) Permits which may be issued by the department shall be as follows:

(a) **Manufacturer's permit.** — A manufacturer's permit shall permit the manufacture, importation in bulk, bottling and storage of alcoholic liquor and its distribution and sale to manufacturers holding permits under this chapter in this state and to persons outside the state who are authorized by law to purchase the same, and to sell exclusively to the department.

Manufacturer's permits shall be of the following classes:

Class 1. Distiller's and/or rectifier's permit, which shall authorize the holder thereof to operate a distillery for the production of distilled spirits by distillation or redistillation and/or to operate a rectifying plant for the purifying, refining, mixing, blending, flavoring or reducing in proof of distilled spirits and alcohol.

Class 2. Wine manufacturer's permit, which shall authorize the holder thereof to manufacture, import in bulk, bottle and store wine or vinous liquor.

Class 3. Native wine producer's permit, which shall authorize the holder thereof to produce, bottle, store and sell native wines.

(b) **Package retailer's permit.** — Except as otherwise provided in this paragraph, a package retailer's permit shall authorize the holder thereof to operate a store exclusively for the sale at retail in original sealed and unopened packages of alcoholic beverages, including native wines, not to be consumed on the premises where sold. Alcoholic beverages shall not be sold by any retailer in any package or container containing less than fifty (50) milliliters by liquid measure. In addition to the sale at retail of packages of alcoholic beverages, the holder of a package retailer's permit is authorized to sell at retail corkscrews, wine glasses, soft drinks, ice, juices, mixers and other beverages commonly used to mix with alcoholic beverages. Nonalcoholic beverages sold by the holder of a package retailer's permit shall not be consumed on the premises where sold.

(c) **On-premises retailer's permit.** — An on-premises retailer's permit shall authorize the sale of alcoholic beverages, including native wines, for consumption on the licensed premises only; however, a patron of the permit holder may remove one (1) bottle of wine from the licensed premises if: (i) the patron consumed a portion of the bottle of wine in the course of consuming a meal purchased on the licensed premises; (ii) the permit holder securely reseals the bottle; (iii) the bottle is placed in a bag that is secured in a manner so that it will be visibly apparent if the bag is opened; and (iv) a dated receipt for the wine and the meal is available. Such a permit shall issue only to qualified hotels, restaurants and clubs, and to common carriers with adequate facilities for serving passengers. In resort areas, whether inside or outside of a municipality, the department, in its discretion, may issue on-premises retailer's permits to such establishments as it deems proper. An on-premises retailer's permit when issued to a common carrier shall authorize the sale and serving of alcoholic beverages aboard any licensed vehicle while moving through any county of the state; however, the sale of such alcoholic beverages shall not be permitted while such vehicle is stopped in a county that has not legalized such sales.

(d) **Solicitor's permit.** — A solicitor's permit shall authorize the holder thereof to act as salesman for a manufacturer or wholesaler holding a proper permit, to solicit on behalf of his employer orders for alcoholic beverages, and to otherwise promote his employer's products in a legitimate manner. Such a permit shall authorize the representation of and employment by one (1) principal only. However, the permittee may also, in the discretion of the department, be issued additional permits to represent other principals. No such permittee shall buy or sell alcoholic beverages for his own account, and no such beverage shall be brought into this state in pursuance of the exercise of such permit otherwise than through a permit issued to a wholesaler or manufacturer in the state.

(e) **Native wine retailer's permit.** — A native wine retailer's permit shall be issued only to a holder of a Class 3 manufacturer's permit, and shall authorize the holder thereof to make retail sales of native wines to consumers for on-premises consumption or to consumers in originally sealed and unopened containers at an establishment located on the premises of or in the immediate vicinity of a native winery.

(f) **Temporary retailer's permit.** — A temporary retailer's permit shall permit the purchase and resale of alcoholic beverages, including native wines, during legal hours on the premises described in the temporary permit only.

Temporary retailer's permits shall be of the following classes:

Class 1. A temporary one-day permit may be issued to bona fide nonprofit civic or charitable organizations authorizing the sale of alcoholic beverages, including native wine, for consumption on the premises described in the temporary permit only. Class 1 permits may be issued only to applicants demonstrating to the department, by a statement signed under penalty of perjury submitted ten (10) days prior to the proposed date or such other time as the department may determine, that they meet the qualifications of Sections 67-1-11, 67-1-37, 67-1-51(2) and (3), 67-1-55, 67-1-57 (excluding paragraph (e)) and 67-1-59. Class 1 permittees shall obtain all alcoholic beverages from package retailers located in the county in which the temporary permit is issued. Alcoholic beverages remaining in stock upon expiration of the temporary permit may be returned by the permittee to the package retailer for a refund of the purchase price upon consent of the package retailer or may be kept by the permittee exclusively for personal use and consumption, subject to all laws pertaining to the illegal sale and possession of alcoholic beverages. The department, following review of the statement provided by the applicant and the requirements of the applicable statutes and regulations, may issue the permit.

Class 2. A temporary permit, not to exceed seventy (70) days, may be issued to prospective permittees seeking to transfer a permit authorized in paragraph (c) of this subsection. A Class 2 permit may be issued only to applicants demonstrating to the department, by a statement signed under the penalty of perjury, that they meet the qualifications of Sections 67-1-5(l), (m), (n), (o), (p) or (q), 67-1-37, 67-1-51(2) and (3), 67-1-55, 67-1-57 and

67-1-59. The department, following a preliminary review of the statement provided by the applicant and the requirements of the applicable statutes and regulations, may issue the permit.

Class 2 temporary permittees must purchase their alcoholic beverages directly from the department or, with approval of the department, purchase the remaining stock of the previous permittee. If the proposed applicant of a Class 1 or Class 2 temporary permit falsifies information contained in the application or statement, the applicant shall never again be eligible for a retail alcohol beverage permit and shall be subject to prosecution for perjury.

Class 3. A temporary one-day permit may be issued to a retail establishment authorizing the complimentary distribution of wine, including native wine, to patrons of the retail establishment at an open house or promotional event, for consumption only on the premises described in the temporary permit. A Class 3 permit may be issued only to an applicant demonstrating to the department, by a statement signed under penalty of perjury submitted ten (10) days before the proposed date or such other time as the department may determine, that it meets the qualifications of Sections 67-1-11, 67-1-37, 67-1-51(2) and (3), 67-1-55, 67-1-57 (excluding paragraph (e)) and 67-1-59. A Class 3 permit holder shall obtain all alcoholic beverages from the holder(s) of a package retailer's permit located in the county in which the temporary permit is issued. Wine remaining in stock upon expiration of the temporary permit may be returned by the Class 3 temporary permit holder to the package retailer for a refund of the purchase price, with consent of the package retailer, or may be kept by the Class 3 temporary permit holder exclusively for personal use and consumption, subject to all laws pertaining to the illegal sale and possession of alcoholic beverages. The department, following review of the statement provided by the applicant and the requirements of the applicable statutes and regulations, may issue the permit. No retailer may receive more than twelve (12) Class 3 temporary permits in a calendar year. A Class 3 temporary permit shall not be issued to a retail establishment that either holds a merchant permit issued under paragraph (*l*) of this subsection, or holds a permit issued under Chapter 3, Title 67, Mississippi Code of 1972, authorizing the holder to engage in the business of a retailer of light wine or beer.

(g) **Caterer's permit.** — A caterer's permit shall permit the purchase of alcoholic beverages by a person engaging in business as a caterer and the resale of alcoholic beverages by such person in conjunction with such catering business. No person shall qualify as a caterer unless forty percent (40%) or more of the revenue derived from such catering business shall be from the serving of prepared food and not from the sale of alcoholic beverages and unless such person has obtained a permit for such business from the Department of Health. A caterer's permit shall not authorize the sale of alcoholic beverages on the premises of the person engaging in business as a caterer; however, the holder of an on-premises retailer's permit may hold a caterer's permit. When the holder of an on-premises retailer's permit or an affiliated entity of the holder also holds a caterer's permit, the caterer's permit shall not authorize the service of alcoholic beverages on a consistent, recurring basis at a separate, fixed location owned or operated by the caterer, on-premises retailer or affiliated entity and an on-premises retailer's permit shall be required for the separate location. All sales of alcoholic beverages by holders of a caterer's permit shall be made at the location being catered by the caterer, and such sales may be made only for consumption at the catered location. The location being catered may be anywhere within a county or judicial district that has voted to come out from under the dry laws or in which the sale, distribution and possession of alcoholic beverages is otherwise authorized by law. Such sales shall be made pursuant to any other conditions and restrictions which apply to sales made by on-premises retail permittees. The holder of a caterer's permit or his employees shall remain at the catered location as long as alcoholic beverages are being sold pursuant to the permit issued under this paragraph (g), and the permittee shall have at the location the identification card issued by the Alcoholic Beverage Control Division of the department. No unsold alcoholic beverages may be left at the catered location by the permittee upon the conclusion of his business at that location. Appropriate law enforcement officers and Alcoholic Beverage Control Division personnel may enter a catered location on private property in order to enforce laws governing the sale or serving of alcoholic beverages.

(h) **Research permit.** — A research permit shall authorize the holder thereof to operate a research facility for the professional research of alcoholic beverages. Such permit shall authorize the holder of the permit to import and purchase limited amounts of alcoholic beverages from the department or from importers, wineries and distillers of alcoholic beverages for professional research.

(i) **Alcohol processing permit.** — An alcohol processing permit shall authorize the holder thereof to purchase, transport and possess alcoholic beverages for the exclusive use in cooking, processing or manufacturing products which contain alcoholic beverages as an integral ingredient. An alcohol processing permit shall not authorize the sale of alcoholic beverages on the premises of the person engaging in the business of cooking, processing or manufacturing products which contain alcoholic beverages. The amounts of alcoholic beverages allowed under an alcohol processing permit shall be set by the department.

(j) **Hospitality cart permit.** — A hospitality cart permit shall authorize the sale of alcoholic beverages from a mobile cart on a golf course that is the holder of an on-premises retailer's permit. The alcoholic beverages sold from the cart must be consumed within the boundaries of the golf course.

(k) **Special service permit.** — A special service permit shall authorize the holder to sell commercially sealed alcoholic beverages to the operator of a commercial or private aircraft for en route consumption only by passengers. A special service permit shall be issued only to a fixed-base operator who contracts with an airport facility to provide fueling and other associated services to commercial and private aircraft.

(*l*) **Merchant permit.** — A merchant permit shall be issued only to the owner of a spa facility, an art studio or gallery, or a cooking school, and shall authorize the holder to serve complimentary by the glass wine only, including native wine, at the holder's spa facility, art studio or gallery, or cooking school. A merchant permit holder shall obtain all wine from the holder of a package retailer's permit.

(m) **Temporary wine charitable auction permit.** — A temporary permit, not to exceed five (5) days, may be issued to a qualifying charitable nonprofit organization that is exempt from taxation under Section 501(c)(3) or (4) of the Internal Revenue Code of 1986. The permit shall authorize the holder to sell wine for the limited purpose of raising funds for the organization during a live or silent auction that is conducted by the organization and that meets the following requirements: (i) the auction is conducted in an area of the state where the sale of wine is authorized; (ii) if the auction is conducted on the premises of an on-premises retailer's permit holder, then the wine to be auctioned must be stored separately from the wine sold, stored or served on the premises, must be removed from the premises immediately following the auction, and may not be consumed on the premises; (iii) the permit holder may not conduct more than two (2) auctions during a calendar year; (iv) the permit holder may not pay a commission or promotional fee to any person to arrange or conduct the auction.

(2) Except as otherwise provided in subsection (4) of this section, retail permittees may hold more than one (1) retail permit, at the discretion of the department.

(3) Except as otherwise provided in this subsection, no authority shall be granted to any person to manufacture, sell or store for sale any intoxicating liquor as specified in this chapter within four hundred (400) feet of any church, school, kindergarten or funeral home. However, within an area zoned commercial or business, such minimum distance shall be not less than one hundred (100) feet.

A church or funeral home may waive the distance restrictions imposed in this subsection in favor of allowing issuance by the department of a permit, pursuant to subsection (1) of this section, to authorize activity relating to the manufacturing, sale or storage of alcoholic beverages which would otherwise be prohibited under the minimum distance criterion. Such waiver shall be in written form from the owner, the governing body, or the appropriate officer of the church or funeral home having the authority to execute such a waiver, and the waiver shall be filed with and verified by the department before becoming effective.

The distance restrictions imposed in this subsection shall not apply to the sale or storage of alcoholic beverages at a bed and breakfast inn listed in the National Register of Historic Places or to the sale or storage of alcoholic beverages in a historic district that is listed in the National Register of Historic Places, is a qualified resort area and is located in a municipality having a population greater than one hundred thousand (100,000) according to the latest federal decennial census.

(4) No person, either individually or as a member of a firm, partnership, limited liability company or association, or as a stockholder, officer or director

in a corporation, shall own or control any interest in more than one (1) package retailer's permit, nor shall such person's spouse, if living in the same household of such person, any relative of such person, if living in the same household of such person, or any other person living in the same household with such person own any interest in any other package retailer's permit.

SOURCES: Codes, 1942, §§ 10265-18, 10265-19, 10265-26; Laws, 1966, ch. 540, §§ 18, 19, 26; Laws, 1976, ch. 467, § 18; Laws, 1988, ch. 302, § 1; Laws, 1988, ch. 383, § 2; Laws, 1989, ch. 484, § 1; Laws, 1992, ch. 574, § 2; Laws, 1994, ch. 538, § 4; Laws, 1996, ch. 417, § 2; Laws, 1997, ch. 487, § 1; Laws, 2000, ch. 307, § 1; Laws, 2006, ch. 529, § 5; Laws, 2007, ch. 462, § 8; Laws, 2008, 1st Ex Sess, ch. 48, § 1; Laws, 2009, ch. 465, § 2; Laws, 2012, ch. 566, § 2, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage, and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Amendment Notes — The 2012 amendment substituted "department" for "commission" throughout the section; and in (1)(f), substituted 'a statement signed under penalty of perjury' or "statement provided by the applicant" or similar words for "affidavit" everywhere it appeared, and substituted "paragraph (c) of this subsection" for "paragraph (c) of this section' in Class 1", and "paragraph (*l*) of this subsection" for "paragraph (*l*) of this section" in the last sentence of Class 3.

Cross References — Annual privilege tax for permits, see § 27-71-5.

Effect of local option for prohibition on holders of native wine producer's and retailer's permits, see § 67-1-13.

Commission to maintain all forms to be completed by applicants necessary for licensure at all district offices, see § 67-1-41.

Permits and licenses to sell, etc., light wine and beer, see §§ 67-3-15 to 67-3-41.

Prohibition on manufacturers of light wine or beer acting as wholesalers or distributors, see § 67-3-46.

Native Wines Law, see §§ 67-5-1 et seq.

Federal Aspects — Provisions of Section 501(c)(3), see 26 USCS § 501(c)(3).

JUDICIAL DECISIONS

1. In general.

A decision of a city council, refusing to issue a city permit to operate a place of business to sell alcoholic beverages upon the ground that the business was within 500 feet of a church, against the applicant's claim that the place of business was within the distance regulated by the city ordinance because the building called a church was not a church in fact but a storehouse for the use of a church, would not be interfered with by the court, since the question was an issue of fact for the determination of the administrative agency in the first instance. Crawford v. City of Pascagoula, 243 So. 2d 555 (Miss. 1971).

The refusal of the state tax commission to issue a permit for the operation of a package liquor store at a location closer than 100 feet to a building in which a day care center for children was operated was not an arbitrary, capricious, or unreasonable action; nor did it constitute an abuse of discretion. Mississippi State Tax Comm'n v. Package Store, Inc., 208 So. 2d 46 (Miss. 1968).

ATTORNEY GENERAL OPINIONS

Sale of alcohol to charter airline that does not have license for sale of alcoholic beverages by licensed package retailer for complimentary distribution is within perimeters established by Section 67-1-51(b). Diaz, Jan. 5, 1994, A.G. Op. #93-0856.

It is up to the State Tax Commission whether to issue a waiver for the distance requirement between a day care and a restaurant serving liquor by the drink. Mayo, Mar. 4, 2005, A.G. Op. 05-0076.

RESEARCH REFERENCES

ALR. "School," "schoolhouse," or the like within statute prohibiting liquor sales within specified distance thereof. 49 A.L.R.2d 1103.

"Church" or the like, within statute prohibiting liquor sales within specified distance thereof. 59 A.L.R.2d 1439.

Right to withdraw application to procure or to transfer liquor license. 73 A.L.R.2d 1223.

Measurement of distances for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base. 4 A.L.R.3d 1250.

Construction of provision precluding sale of intoxicating liquors within specified distance from another establishment selling such liquors. 7 A.L.R.3d 809.

Zoning regulation of intoxicating liquor as pre-empted by state law. 65 A.L.R.4th 555.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 87 et seq.

10 Am. Jur. Legal Forms 2d, Intoxicating Liquors §§ 151:21 et seq. (public regulation; licensing).

CJS. 48 C.J.S., Intoxicating Liquors §§ 126 et seq.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-1-53. Application for permit; notice of application.

(1) Application for permits shall be in such form and shall contain such information as shall be required by the regulations of the commission; however, no regulation of the commission shall require personal financial information from any officer of a corporation applying for an on-premises retailer's permit to sell alcoholic beverages unless such officer owns ten percent (10%) or more of the stock of such corporation.

(2) Every applicant for each type of permit authorized by Section 67-1-51 shall give notice of such application by publication for two (2) consecutive issues in a newspaper of general circulation published in the city or town in which applicant's place of business is located. However, in instances where no newspaper is published in the city or town, then the notice shall be published in a newspaper of general circulation published in the county where the applicant's business is located. If no newspaper is published in the county, the notice shall be published in a qualified newspaper which is published in the closest neighboring county and circulated in the county of applicant's residence. The notice shall be printed in ten-point black face type and shall set forth the type of permit to be applied for, the exact location of the place of business, the name of the owner or owners thereof, and if operating under an assumed name, the trade name together with the names of all owners, and if

a corporation, the names and titles of all officers. The cost of such notice shall be borne by the applicant.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 10265-19; Laws, 1966, ch. 540, § 19; Laws, 1993, ch. 362, § 1; Laws, 1997, ch. 588, § 21; Laws, 2006, ch. 529, § 7, eff from and after passage (approved Apr. 3, 2006.)

Editor's Note — Laws, 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional".

Cross References — Application for light wine and beer permit, see § 67-3-17.

RESEARCH REFERENCES

ALR. Right to withdraw application to procure liquor license. 73 A.L.R.2d 1223.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper. 24 A.L.R.4th 822.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 118.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 21-44 (issuance or refusal to issue licenses).

CJS. 48 C.J.S., Intoxicating Liquors §§ 151 et seq.

§ 67-1-55. Applicants for permits must disclose persons financially interested in business; penalty.

No permit of any type shall be issued by the commission until the applicant has first filed with the commission a sworn statement disclosing all persons who are financially involved in the operation of the business for which the permit is sought. If an applicant is an individual, he will swear that he owns one hundred percent (100%) of the business for which he is seeking a permit. If the applicant is a partnership, all partners and their addresses shall be disclosed and the extent of their interest in the partnership shall be disclosed. If the applicant is a corporation, the total stock in the corporation shall be disclosed and each shareholder and his address and the amount of stock in the corporation owned by him shall be disclosed. If the applicant is a limited liability company, each member and their addresses shall be disclosed and the extent of their interest in the limited liability company shall be disclosed. If the applicant is a trust, the trustee and all beneficiaries and their addresses shall be disclosed. If the applicant is a combination of any of the above, all information required to be disclosed above shall be required.

All the disclosures shall be in writing and kept on file at the commission's office and shall be available to the public.

Every applicant must, when applying for a renewal of his permit, disclose any change in the ownership of the business or any change in the beneficiaries of the income from the business.

Any person who willfully fails to fully disclose the information required by this section, or who gives false information, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined a sum not to exceed Five Hundred Dollars ($500.00) or imprisoned for not more than one (1) year, or both, and the person or applicant shall never again be eligible for any permit pertaining to alcoholic beverages.

SOURCES: Codes, 1942, § 10265-20; Laws, 1966, ch. 540, § 20; Laws, 2006, ch. 529, § 9, eff from and after passage (approved Apr. 3, 2006.)

Cross References — Temporary, one-day permit authorizing the sale of alcoholic beverages, see § 67-1-51.

Temporary permit for those seeking to transfer either a package retailer's permit or an on-premises retailer's permit, see § 67-1-51.

Application of this section to the qualifications for a Class 1 or Class 2 temporary retailer's permit, see § 67-1-51.

Suspension and revocation of permits, see § 67-1-71.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The licensing power for retail liquor permits is placed in the state tax commission, not the courts, and the commission is given a wide latitude and discretion in acting upon applications for such permits. Mississippi State Tax Comm'n v. Moore, 209 So. 2d 832 (Miss. 1968).

No person has a vested right to have a license for the sale of intoxicating liquors issued to him, and qualifications prescribed by statute are construed as strict limitations on the granting of such licenses. Mississippi State Tax Comm'n v. Moore, 209 So. 2d 832 (Miss. 1968).

Where another person who is himself disqualified from holding a license for operation of a retail liquor store has a financial interest in the premises or business and would dominate the applicant in operating the business, the license may be refused. Mississippi State Tax Comm'n v. Moore, 209 So. 2d 832 (Miss. 1968).

In determining whether to grant a retail liquor dealer's license the state tax commission can consider the evidence and all reasonable inferences from it, and where the applicant for the license was a young woman college student whose father had previously been denied a license to operate a package store on the same premises by reason of his judgment indebtedness to the commission, that body could reasonably conclude that it was highly probable that the applicant, in the operation of the business, would be under the direction and control of her father. Mississippi State Tax Comm'n v. Moore, 209 So. 2d 832 (Miss. 1968).

RESEARCH REFERENCES

ALR. Liquor license as subject to execution or attachment. 40 A.L.R.4th 927.

§ 67-1-57. Qualification of applicants.

Before a permit is issued the commission shall satisfy itself:

(a) That the applicant, if an individual, or if a partnership, each of the members of the partnership, or if a corporation, each of its principal officers and directors, or if a limited liability company, each member of the limited liability company, is of good moral character and, in addition, enjoys a reputation of being a peaceable, law-abiding citizen of the community in which he resides, and is generally fit for the trust to be reposed in him, is not less than twenty-one (21) years of age, and has not been convicted of a felony in any state or federal court.

(b) That, except in the case of an application for a solicitor's permit, the applicant is the true and actual owner of the business for which the permit is desired, and that he intends to carry on the business authorized for himself and not as the agent of any other person, and that he intends to superintend in person the management of the business or that he will designate a manager to manage the business for him; any manager must be approved by the commission and must possess all of the qualifications required of a permittee.

(c) That the applicant for a package retailer's permit, if an individual, is a resident of the State of Mississippi. If the applicant is a partnership, each member of the partnership must be a resident of the state. If the applicant is a limited liability company, each member of the limited liability company must be a resident of the state. If the applicant is a corporation, the designated manager of the corporation must be a resident of the state.

(d) That the place for which the permit is to be issued is an appropriate one considering the character of the premises and the surrounding neighborhood.

(e) That the place for which the permit is to be issued is within the corporate limits of an incorporated municipality or qualified resort area or club which comes within the provisions of this chapter.

(f) That the applicant is not indebted to the state for any taxes, fees or payment of penalties imposed by any law of the State of Mississippi or by any rule or regulation of the commission.

(g) That the applicant is not in the habit of using alcoholic beverages to excess and is not physically or mentally incapacitated, and that the applicant has the ability to read and write the English language.

(h) That the commission does not believe and has no reason to believe that the applicant will sell or knowingly permit any agent, servant or employee to unlawfully sell liquor in a dry area or in any other manner contrary to law.

(i) That the applicant is not residentially domiciled with any person whose permit or license has been cancelled for cause within the twelve (12) months next preceding the date of the present application for a permit.

(j) That the commission has not, in the exercise of its discretion which is reserved and preserved to it, refused to grant permits under the restrictions of this section, as well as under any other pertinent provision of this chapter.

(k) That there are not sufficient legal reasons to deny a permit on the ground that the premises for which the permit is sought has previously been operated, used or frequented for any purpose or in any manner that is lewd, immoral or offensive to public decency. In the granting or withholding of any permit to sell alcoholic beverages at retail, the commission in forming its conclusions may give consideration to any recommendations made in writing by the district or county attorney or county, circuit or chancery judge of the county, or the sheriff of the county, or the mayor or chief of police of an incorporated city or town wherein the applicant proposes to conduct his business and to any recommendations made by representatives of the commission.

(*l*) That the applicant and the applicant's key employees, as determined by the commission, do not have a disqualifying criminal record. In order to obtain a criminal record history check, the applicant shall submit to the commission a set of fingerprints from any local law enforcement agency for each person for whom the records check is required. The commission shall forward the fingerprints to the Mississippi Department of Public Safety. If no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. Costs for processing the set or sets of fingerprints shall be borne by the applicant. The commission shall not deny employment to an employee of the applicant prior to the identification of a disqualifying record or other disqualifying information.

SOURCES: Codes, 1942, § 10265-23; Laws, 1966, ch. 540, § 23; Laws, 1968, ch. 591, § 1; Laws, 1993, ch. 314, § 1; Laws, 2002, ch. 494, § 1, Laws, 2006, ch. 529, § 10, eff from and after passage (approved Apr. 3, 2006).

Cross References — Temporary permit for those seeking to transfer either a package retailer's permit or an on-premises retailer's permit, see § 67-1-51.

Application of this section to the qualifications for a Class 1 or Class 2 Temporary retailer's permit, see § 67-1-51.

Temporary, one-day permit authorizing the sale of alcoholic beverages, see § 67-1-51.

Qualifications of applicants for permits to sell, etc., light wine and beer, see §§ 67-3-19, 67-3-21.

Prohibition on manufacturers of light wine or beer acting as wholesalers or distributors, see § 67-3-46.

JUDICIAL DECISIONS

1. In general.

Statute only applied to those seeking a permit; it did not apply where the business owner already had a solicitor's permit and no other section of the code stated that the statute applied to maintaining the permit. D. J. Koenig & Assocs. v. Miss. State Tax Comm'n, 838 So. 2d 246 (Miss. 2003).

The licensing power for retail liquor permits is placed in the state tax commission, not the courts, and the commission is given a wide latitude and discretion in acting upon applications for such permits.

Mississippi State Tax Comm'n v. Moore, 209 So. 2d 832 (Miss. 1968).

No person has a vested right to have a license for the sale of intoxicating liquors issued to him, and qualifications prescribed by statute are construed as strict limitations on the granting of such licenses. Mississippi State Tax Comm'n v. Moore, 209 So. 2d 832 (Miss. 1968).

Where another person who is himself disqualified from holding a license for operation of a retail liquor store has a financial interest in the premises or business and would dominate the applicant in operating the business, the license may be refused. Mississippi State Tax Comm'n v. Moore, 209 So. 2d 832 (Miss. 1968).

The common law of agency is not the proper criterion to determine whether the state tax commission abused its discretion in refusing to issue a retail liquor dealer's license, and the commission may satisfy itself as to whether the applicant or another will be or become the true and actual owner of the business for which the permit is sought. Mississippi State Tax Comm'n v. Moore, 209 So. 2d 832 (Miss. 1968).

In determining whether to grant a retail liquor dealer's license the state tax commission can consider the evidence and all reasonable inferences from it, and where the applicant for the license was a young woman college student whose father had previously been denied a license to operate a package store on the same premises by reason of his judgment indebtedness to the commission, that body could reasonably conclude that it was highly probable that the applicant, in the operation of the business, would be under the direction and control of her father. Mississippi State Tax Comm'n v. Moore, 209 So. 2d 832 (Miss. 1968).

RESEARCH REFERENCES

ALR. Grant or renewal of liquor license as affected by fact that applicant held such license in the past. 2 A.L.R.2d 1239.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 114 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 146-148.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-1-59. "Applicant" defined.

Where the word "applicant" is used in Section 67-1-57 or in Sections 67-1-51, 67-1-53, 67-1-55 and 67-1-63, it shall also mean and include each member of a partnership, limited liability company or association and all officers and the owner or owners of the majority of the corporate stock of a corporation, as of the date of the application.

SOURCES: Codes, 1942, § 10265-23; Laws, 1966, ch. 540, § 23; Laws, 1968, ch. 591, § 1; Laws, 2006, ch. 529, § 11, eff from and after passage (approved Apr. 3, 2006.)

Cross References — Temporary, one-day permit authorizing the sale of alcoholic beverages, see § 67-1-51.

Application of this section to the qualifications for a Class 1 or Class 2 temporary retailer's permit, see § 67-1-51.

Temporary permit for those seeking to transfer either a package retailer's permit or an on-premises retailer's permit, see § 67-1-51.

§ 67-1-61. Validity, contents and display of permits.

All permits issued by the commission shall expire twelve months from date of issuance, and no permit shall be issued for a period longer than one year. Each permit shall state a class to which it belongs, the name of the permittee, the address of the premises for which granted, and the date of its expiration. All permits issued shall at all times be prominently displayed on the premises for which issued.

SOURCES: Codes, 1942, § 10265-21; Laws, 1966, ch. 540, § 21; ch. 649, § 16, eff from and after July 1, 1966.

Cross References — Display of permits to sell, etc., light wine and beer, see § 67-3-23.

§ 67-1-63. Permit renewals; continued operation after denial of renewal under certain circumstances; appeals.

(1) Any permittee may renew his permit at the expiration thereof for an additional term of one (1) year, provided he is then qualified to receive a permit and the premises for which the renewal is sought are suitable for such purposes. The renewal privilege herein provided for shall not be construed as a vested right. No "on-premises" retailer's permit shall be renewed at the expiration thereof for any "hotel" or "restaurant" under this chapter unless the commission is satisfied that the holder thereof is continuing to meet the requirements of a hotel or restaurant, as defined in Section 67-1-5.

(2) When an application for the renewal of a permit has been denied by the department for a reason other than for being incomplete, for failure to pay any applicable license privilege taxes or fees required for renewal or for failure to post a bond, cash or securities as required by Section 27-71-21, the permittee shall be allowed to continue to operate under the permit for which renewal was denied until the last of the following dates:

(a) The date on which the permit expires;

(b) The date on which the time period for filing an appeal of the denial of the renewal to the Board of Tax Appeals expires;

(c) If the denial is timely appealed to the Board of Tax Appeals and this appeal is later withdrawn, the date on which the withdrawal of appeal occurs; or

(d) If the denial is timely appealed to the Board of Tax Appeals and an order is entered by the Board of Tax Appeals affirming the denial of the renewal, the date on which the permittee receives notice of the decision of the Board of Tax Appeals affirming the denial. Refusal to accept delivery of such notice or the posting of the final decision of the Board of Tax Appeals at the permitted place of business shall constitute receipt of notice by the permittee of this decision.

(3) If the denial of an application for renewal of a permit is appealed to the Board of Tax Appeals and the board reverses the denial of the application for

renewal, the department shall renew and issue the permit from its last expiration date.

(4) The issuance and/or renewal of a permit based on the decision of the Board of Tax Appeals shall not bar or estop the department from appealing this decision of the Board of Tax Appeals to chancery court under Section 67-1-39. Any subsequent renewal of this permit while an appeal by the department from the decision of the Board of Tax Appeals is pending shall be subject to the final decision of the court on this appeal. If in such an appeal by the department, a court enters a final decision and/or order reversing the decision of the board and affirming the denial of the application for a permit or the application for renewal of a permit, the permit, even if subsequently renewed, shall be deemed denied and not authorize the permittee to sell alcoholic beverages under that permit after the date on which the decision and/or order of the court affirming the denial of the permit becomes final and not subject to any further appeal.

SOURCES: Codes, 1942, § 10265-22; Laws, 1966, ch. 540, § 22; Laws, 1986, ch. 486, § 1; Laws, 2009, ch. 492, § 133, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Board of tax appeals, see §§ 27-4-1 et seq.

Annual privilege tax for permits, see § 27-71-5.

Suspension and revocation of permits, see § 67-1-71.

Department of revenue generally, see §§ 27-3-1 et seq.

RESEARCH REFERENCES

ALR. Grant or renewal of liquor license as affected by fact that applicant held such license in the past. 2 A.L.R.2d 1239.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 139 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 201 et seq.

§ 67-1-65. Issuance of permits in counties having no incorporated municipality.

In any county having heretofore voted, or which hereafter votes, to come out from under the prohibition law, in which there is not located an incorporated municipality within such county, the state tax commission may issue package retailer's permits in such county.

SOURCES: Codes, 1942, § 10265-23.5; Laws, 1968, ch. 595, § 1, eff from and after passage (approved June 27, 1968).

§ 67-1-67. Transfer of permit.

No permit shall be transferred by the permittee to any other person or any other place except with the written consent of the commission upon a regular application therefor in writing and upon consideration thereof as provided in this chapter for an original application for a permit. The commission shall not approve the transfer of the permit of any person against whom there is pending in the courts or before the commission any charge of keeping a disorderly house, or of violating this chapter or the laws against gambling in this state or against whom there is pending any proceedings for the revocation, suspension or cancellation of the permit.

SOURCES: Codes, 1942, § 10265-24; Laws, 1966, ch. 540, § 24, eff from and after July 1, 1966.

Cross References — Transfer of light wine and beer permits, see § 67-3-23.

RESEARCH REFERENCES

ALR. Transfer of retail liquor license or permit from one location to another. 98 A.L.R.2d 1123.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 143 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 51-54 (transfer of licenses).

CJS. 48 C.J.S., Intoxicating Liquors § 209.

§ 67-1-69. Permittees must comply with federal statutes.

No person holding any permit issued under the provisions of this chapter shall engage in any business or activity authorized by such permit unless such person shall qualify so to do by complying with all statutes of the United States of America, and all regulations issued pursuant thereto, which are applicable or shall pertain to such business or activity, and shall continue to be so qualified at all times while engaging in such business or activity. As a prerequisite to the issuance of any permit under this chapter, the applicant shall first obtain the required federal occupational stamp for the type of business for which the permit has been approved by the commission.

SOURCES: Codes, 1942, § 10265-29; Laws, 1966, ch. 540, § 29, eff from and after July 1, 1966.

§ 67-1-71. Suspension and revocation of permits; reasonable notice of charges for which suspension or revocation is sought; hearing before Board of Tax Appeals.

The department may revoke or suspend any permit issued by it for a violation by the permittee of any of the provisions of this chapter or of the regulations promulgated under it by the department.

Permits must be revoked or suspended for the following causes:

(a) Conviction of the permittee for the violation of any of the provisions of this chapter;

(b) Willful failure or refusal by any permittee to comply with any of the provisions of this chapter or of any rule or regulation adopted pursuant thereto;

(c) The making of any materially false statement in any application for a permit;

(d) Conviction of one or more of the clerks, agents or employees of the permittee, of any violation of this chapter upon the premises covered by such permit within a period of time as designated by the rules or regulations of the department;

(e) The possession on the premises of any retail permittee of any alcoholic beverages upon which the tax has not been paid;

(f) The willful failure of any permittee to keep the records or make the reports required by this chapter, or to allow an inspection of such records by any duly authorized person;

(g) The suspension or revocation of a permit issued to the permittee by the federal government, or conviction of violating any federal law relating to alcoholic beverages;

(h) The failure to furnish any bond required by Section 27-71-21 within fifteen (15) days after notice from the department; and

(i) The conducting of any form of illegal gambling on the premises of any permittee or on any premises connected therewith or the presence on any such premises of any gambling device with the knowledge of the permittee.

The provisions of paragraph (i) of this section shall not apply to gambling or the presence of any gambling devices, with knowledge of the permittee, on board a cruise vessel in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, or on any vessel as defined in Section 27-109-1 whenever such vessel is on the Mississippi River or navigable waters within any county bordering on the Mississippi River. The department may, in its discretion, issue on-premises retailer's permits to a common carrier of the nature described in this paragraph.

No permit shall be suspended or revoked until after the permittee has been provided reasonable notice of the charges against him for which suspension or revocation is sought and the opportunity to a hearing before the Board of Tax Appeals to contest such charges and the suspension or revocation proposed. Opportunity to a hearing is provided without an actual hearing if the permittee, after receiving reasonable notice, including notice of his right to a hearing, fails to timely request a hearing. The permittee may also at any time waive his rights to reasonable notice and/or to the opportunity to a hearing by agreeing to a suspension or revocation offered by the department. Notwithstanding the requirement above that a permit may not be suspended without notice and opportunity to a hearing, sales of alcoholic beverages by a permittee under a permit for which the bond under Section 27-71-21 has been cancelled shall be suspended from and after issuance of the notice provided in subsection (h) above and shall continue to be suspended until the bond is reinstated, a new bond is posted or sufficient cash or securities as provided under Section 27-71-21 are deposited with the State Treasurer for this permit.

In addition to the causes specified in this section and other provisions of this chapter, the department shall be authorized to suspend the permit of any permit holder for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a permit suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1942, § 10265-28; Laws, 1966, ch. 540, § 28; Laws, 1989, ch. 310, § 1; Laws, 1989, ch. 480, § 8; Laws, 1990, ch. 449, § 2; Laws, 1990, ch. 573, § 6; Laws, 1990 Ex Sess, ch. 45 § 146; Laws, 1992, ch. 459, § 2; Laws, 1996, ch. 507, § 17; Laws, 2009, ch. 492, § 134; Laws, 2010, ch. 388, § 13, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2010 amendment, in the second paragraph following (i), substituted "the bond under Section 27-71-21 has been cancelled shall be suspended from and after issuance of the notice" for "the bond shall be suspended under Section 27-71-21 has been cancelled from and after issuance of this notice."

Cross References — Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

Licensing and regulation of cruise vessels, see § 27-109-1 et seq.
Revocation or suspension of light wine and beer permits, see §§ 67-3-29 to 67-3-41.
Mississippi Gaming Control Act, see § 75-76-1 et seq.

RESEARCH REFERENCES

ALR. Validity of statute or rule which makes specified conduct or condition a ground for cancellation or suspension of license, irrespective of licensee's personal fault. 3 A.L.R.2d 107.

Right to hearing before revocation or suspension of liquor license. 35 A.L.R.2d 1067.

Revocation or suspension of liquor license because of drinking or drunkenness on part of licensee or business associates. 36 A.L.R.3d 1301.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 143 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 61-84 (revocation or suspension of licenses).

CJS. 48 C.J.S., Intoxicating Liquors §§ 222 et seq.

§ 67-1-72. Appeal to Board of Tax Appeals from certain actions of the Department of Revenue; notice of hearing; order.

(1) Except as otherwise provided in this chapter, any applicant or holder of a permit issued under this chapter which is aggrieved by an action of the Department of Revenue to deny his application for a permit, to deny the renewal of his permit or to revoke or suspend his permit shall be allowed to appeal to the Board of Tax Appeals from this action. This appeal is to be filed by the aggrieved person with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that person received notice of the action of the department being aggrieved. If the person aggrieved fails to appeal within this fifteen-day period, the action of the Department of Revenue shall take effect as set out in the notice. The Department of Revenue retains the authority to change at any time the action aggrieved to in an appeal under this subsection. The applicant or holder of any permit issued under this chapter may waive his right to notice and opportunity to a hearing as provided by this subsection and agree to the action being taken by the department. The inability of the Department of Revenue to issue or renew a permit due to an incomplete application or due to the failure of the applicant to pay the annual privilege taxes and fees provided by Section 27-71-5 and/or the failure of the applicant to post or deposit the bond, cash or securities as required by Section 27-71-21 shall not constitute a denial for purposes of this subsection.

(2) Any applicant for approval as a manager of an establishment operating under a permit issued under this chapter or who holds the designation of an approved manager of an establishment operating under a permit issued under this chapter and who is aggrieved by an action of the Department of Revenue to deny his application for approval as a manager or to revoke or

suspend his designation as an approved manager shall be allowed to appeal to the Board of Tax Appeals from this action. This appeal is to be filed by the aggrieved person with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that person received notice of the action of the department being aggrieved. If the person aggrieved fails to appeal within this fifteen-day period, the action of the Department of Revenue shall take effect as set out in the notice. The Department of Revenue retains the authority to change at any time the action aggrieved to in an appeal under this subsection. The applicant or holder of an approved manager designation may waive his right to notice and opportunity to a hearing as provided by this subsection and agree to the action being taken by the department. The inability of the Department of Revenue to consider an application for approval of an applicant as a manager due to an incomplete application shall not constitute a denial of the application for purposes of this subsection.

(3) Any applicant for approval of an area or locality as a qualified resort area under this chapter who is aggrieved by the decision of the Department of Revenue to deny the qualified resort area as requested and any county or municipality wherein the proposed qualified resort area is located may appeal to the Board of Tax Appeals from such decision. This appeal is to be filed by the aggrieved applicant or by the affected county or municipality with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that the person or entity filing the appeal received notice of the decision of the Department of Revenue to deny the qualified resort area. If an appeal is not filed within this fifteen-day period, the decision of the Department of Revenue shall become final. The Department of Revenue retains the authority to change at any time the decision aggrieved to in an appeal under this subsection. The inability of the Department of Revenue to consider an application for the approval of an area or locality as a qualified resort area due to an incomplete application shall not constitute a denial of that application for purposes of this subsection.

(4) Any person, including any county or municipality in which the qualified resort area is located, who is aggrieved by the decision of the Department of Revenue to revoke the approval of an area or locality as a qualified resort area may appeal to the Board of Tax Appeals from such decision. This appeal is to be filed by the aggrieved person with the Executive Director of the Board of Tax Appeals, with a copy being sent to the Department of Revenue, within fifteen (15) days from the date that the person or entity filing the appeal received notice of the decision of the department to revoke approval of the qualified resort area. At the discretion of the Department of Revenue, in addition to any other notice to be provided under this subsection, the department may provide notice of its decision to revoke approval of the qualified resort area by publication in the same manner as provided by regulation when approval of a qualified resort area is sought. In regard to such publication, the fifteen-day period provide d herein will begin on the date that notice is first published. If an appeal is not filed within this fifteen-day period,

the decision of the Department of Revenue shall become final. The Department of Revenue retains the authority to change at any time the decision aggrieved to in an appeal under this subsection.

(5) Any person objecting to an application for the issuance or transfer of a permit, other than a temporary retailer's permit, issued under this chapter and who timely requests in writing a hearing on his objection shall be given a hearing before the Board of Tax Appeals unless the permit is denied by the Department of Revenue and an appeal is not taken by the applicant to the Board of Tax Appeals from that denial or the applicant withdraws his application. Any written request for a hearing on an objection must be filed with the Department of Revenue within fifteen (15) days from the first date of publication of the notice of such application under Section 67-1-53. If the department determines that the permit should be denied, notice will be provided to the applicant as set out in subsection (1) of this section, and if the applicant timely requests a hearing on the denial as provided by this subsection (5), the department will advise the Executive Director of the Board of Tax Appeals and the applicant of the written request for a hearing on an objection to the permit. The hearing on the objection to the permit and the hearing on the appeal by the applicant from the denial of the department of the application shall be consolidated and heard by the Board of Tax Appeals at the same time. If the department determines that the permit should be issued, the department will advise the applicant and the Executive Director of the Board of Tax Appeals of the timely written request for a hearing on an objection to the application and a hearing will be set before the Board of Tax Appeals on this objection. If prior to the hearing, either the person requesting the hearing withdraws his request or the applicant withdraws his application, the hearing will be cancelled and the objection proceedings before the Board of Tax Appeals on the application will be dismissed as moot. In the case of such withdrawals, the Board of Tax Appeals is authorized to assess to either or both parties any costs incurred by it prior to such withdrawal. The Department of Revenue retains authority to issue the permit to the applicant where the person objecting to the application withdraws his request for a hearing.

(6) Any person objecting to an application for approval by the Department of Revenue of a area or locality as a qualified resort area under this chapter and who timely requests in writing a hearing on his objection shall be given a hearing before the Board of Tax Appeals unless approval of the application is denied by the Department of Revenue and an appeal is not taken by the applicant or the county or municipality in which the proposed qualified resort area is located to the Board of Tax Appeals from that denial or the applicant withdraws his application. Any written request for a hearing on an objection must be filed with the Department of Revenue within fifteen (15) days from the first date of publication of the notice of such application as provided by regulation. If the department determines that the application for approval of the proposed area or locality as a qualified resort area should be denied, the department will proceed with denial of such application as set out in subsection (3) of this section, and if the applicant or the county or municipality in

which the proposed qualified resort area is located timely requests a hearing on the denial as provided by subsection (3) of this section, the department will advise the Executive Director of the Board of Tax Appeals and the applicant of the written request for a hearing on an objection to the application. The hearing on the objection to approval of the proposed qualified resort area and the hearing on the appeal from the denial of the department of the application for such approval shall be consolidated and heard by the Board of Tax Appeals at the same time. If the department determines that the proposed qualified resort area should be approved, the department will advise the applicant and the Executive Director of the Board of Tax Appeals of the timely written request for a hearing on an objection to the application and a hearing will be set before the Board of Tax Appeals on this objection. If prior to the hearing, either the person requesting the hearing withdraws his request or the applicant withdraws his application, the hearing will be cancelled and the objection proceedings before the Board of Tax Appeals on the application will be dismissed as moot. In the case of such withdrawals, the Board of Tax Appeals is authorized to assess to either or both parties any costs incurred by it prior to such withdrawal. The Department of Revenue retains authority to approve the proposed area or locality as a qualified resort area where the person objecting to the application withdraws his request for a hearing.

(7) Any person having an interest in any alcoholic beverages or raw materials which the Department of Revenue intends to dispose of under Section 67-1-18 shall be given reasonable notice of this proposed disposal, and upon such notice, this person may request a hearing before the Board of Tax Appeals to establish his right or claim to this property. This request for a hearing shall be filed with the Board of Tax Appeals, with a copy sent to the Department of Revenue, within fifteen (15) days from the date of receipt of the notice provided above by the person filing the request. If a request is not received by the Board of Tax Appeals within this fifteen-day period, the department may order the property disposed of in accordance with Section 67-1-18.

(8) Upon receipt of a written request for hearing or appeal as set out above, the executive director shall schedule a hearing before the Board of Tax Appeals on this request or appeal. A notice of the hearing shall be mailed to all persons or entities having an interest in the matter being heard which shall always include the person or entity filing the request or appeal for which the hearing is being set, the applicant or holder of any permit, approved manager status or qualified resort area status in issue, any person who filed a written request for a hearing on an objection to any application in issue and the Department of Revenue. This notice shall provide the date, time and location of the hearing. Mailing to the attorney representing a person or entity in the matter being heard shall be the same as mailing to the person or entity the attorney represents. Failure of the person or entity on whose request or appeal the matter was set for hearing to appear personally or through his designated representative at the hearing shall constitute an involuntary withdrawal of his request or appeal. Upon such withdrawal, the Board of Tax Appeals shall note

on the record the failure of the person or entity to appear at the hearing and shall dismiss the request or appeal and remand the matter back to the Department of Revenue for appropriate action.

(9) At any hearing before the Board of Tax Appeals on an appeal or hearing request as set out above, two (2) members of the Board of Tax Appeals shall constitute a quorum. At the hearing, the Board of Tax Appeals shall try the issues presented according to law and the facts and pursuant to any guidelines established by regulation. The rules of evidence shall be relaxed at the hearing and the hearing shall be recorded by a court reporter. After reaching a decision on the issues presented, the Board of Tax Appeals shall enter an order setting forth its findings and decision in the matter. A copy of the order of the Board of Tax Appeals shall be mailed to the person or entity filing the request or appeal which was heard, the applicant or holder of any permit, approved manager status or qualified resort area status in issue, any person who filed a written request for a hearing on an objection to any application in issue and the Department of Revenue to notify them of the findings and decision of the Board of Tax Appeals.

SOURCES: Laws, 2009, ch. 492, § 135; Laws, 2010, ch. 388, § 14, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in the third sentence in subsection (5) by substituting "this subsection (5)" for the second occurrence of "subsection (1) of this section." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2010 amendment, in the second sentence in (1), substituted "within fifteen (15) days from the date that person received notice of the action" for "within fifteen (15) days of the date to that person received notice of the action"; in the third sentence in (5), substituted "as provided by subsection (1) of this section" for "as provided by this subsection (1)"; and in the second sentence in (6), substituted "publication of the notice of such application" for "publication on the notice of such application."

Cross References — Department of revenue generally, see §§ 27-3-1 et seq.

Board of tax appeals, see §§ 27-4-1 et seq.

§ 67-1-73. Records and reports; penalty.

Every manufacturer, including native wine producers, within or without the state, and every other shipper of alcoholic beverages who sells any alcoholic beverage, including native wine, within the state, shall, at the time of making such sale, file with the commission a copy of the invoice of such sale showing in detail the kind of alcoholic beverage sold, the quantities of each, the size of the container and the weight of the contents, the alcoholic content, and the name and address of the person to whom sold.

Every person transporting alcoholic beverages, including native wine, within this state to a point within this state, whether such transportation originates within or without this state, shall, within five (5) days after delivery of such shipment, furnish the commission a copy of the bill of lading or receipt, showing the name or consignor or consignee, date, place received, destination, and quantity of alcoholic beverages delivered. Upon failure to comply with the provisions of this section, such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of Fifty Dollars ($50.00) for each offense.

SOURCES: Codes, 1942, § 10265-30; Laws, 1966, ch. 540, § 30; Laws, 1976, ch. 467, § 19, eff from and after passage (approved May 25, 1976).

Cross References — Native Wines Law, see §§ 67-5-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 67-1-75. Offenses by holder of package retailer's permit or by employee thereof; penalty.

If the holder of a package retailer's permit, or any employee thereof:

(a) Shall sell, offer for sale or permit to be sold in, on or about the premises covered by such permit any alcoholic beverages except in the original sealed and unopened packages; or

(b) Shall permit the drinking or consumption of any alcoholic beverages in, on or about the premises covered by such permit; or

(c) Shall sell, offer for sale or permit the sale in, on or about the premises of alcoholic beverages in any package or container containing less than fifty (50) milliliters by liquid measure; then such person or employee shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for a term of not more than one (1) year, or by both such fine and imprisonment, in the discretion of the court. In addition, in the case of the commission of any of such offenses by the holder of a permit, it shall be the duty of the commission forthwith to revoke the permit held by such person and conviction of the criminal offense shall not be a condition precedent to such revocation.

SOURCES: Codes, 1942, § 10265-25; Laws, 1966, ch. 540, § 25; Laws, 1977, ch. 418; Laws, 1988, ch. 383, § 3, eff from and after July 1, 1988.

Cross References — Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

Rule making it unlawful to sell intoxicating liquor, see § 97-31-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 276 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

CJS. 48 C.J.S., Intoxicating Liquors §§ 311 et seq., 380.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-1-77. Financial interest prohibition; exceptions; penalty.

(1) It shall be unlawful for the holder of a manufacturer's or wholesaler's permit, or anyone connected with the business of such holder, or for any other distiller, wine manufacturer, brewer, rectifier, blender, or bottler, to have any financial interest in any premises upon which any alcoholic beverage is sold at retail by any permittee, or in the business conducted by such permittee, except that:

(a) The holder of a manufacturer's or wholesaler's permit may contract for the service of a representative in the area of governmental affairs on a part-time basis with a holder of an on-premises permit.

(b) A distiller, wine manufacturer, brewer, rectifier, blender or bottler may have a financial interest in a premises upon which alcoholic beverages are sold at retail by a permittee, or in the business conducted by a permittee, if the permittee does not sell or serve any alcoholic beverages that are distilled, manufactured, brewed, rectified, blended or bottled by the distiller, wine manufacturer, brewer, rectifier, blender or bottler having the financial interest in the premises or in the business conducted by a permittee.

(2) It shall also be unlawful for any such person, or anyone connected with his, its, or their business to lend any money or make any gift or offer any gratuity, to any retail permittee, except as authorized by regulations of the commission, to the holder of any retail permit issued under the provisions of this chapter. Except as above provided, no retail permittee shall accept, receive, or make use of any money or gift furnished by any such person, or become indebted to such person except for the purchase of alcoholic beverages.

(3) The commission shall not prohibit the furnishing of advertising specialties, printed materials, or other things having nominal value to a retail permittee. This section shall not be construed to prohibit the possession by any

person of advertising specialties, printed materials, or other things having nominal value furnished by a retail permittee.

(4) Any person violating the provisions of this section shall, upon conviction, be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than two (2) years, or by both such fine and imprisonment, in the discretion of the court.

SOURCES: Codes, 1942, § 10265-26; Laws, 1966, ch. 540, § 26; Laws, 1985, ch. 422; Laws, 1986, ch. 450, § 2; Laws, 1989, ch. 361, § 1; Laws, 2007, ch. 302, § 1, eff from and after passage (approved Jan. 31, 2007.)

Cross References — Imposition of standard state assessment in addition to court imposed fines or other penalties for misdemeanors and felonies, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 94.

CJS. 48 C.J.S., Intoxicating Liquors §§ 297, 298.

§ 67-1-79. Credit to retailers prohibited.

No alcoholic beverage shall be sold by any wholesaler to any retailer, nor shall any retailer purchase any alcoholic beverage, except for cash. Each delivery of any alcoholic beverage to a retail permittee shall be accompanied by an invoice of sale or delivery slip which shall bear as its date the date of delivery of such alcoholic beverage.

SOURCES: Codes, 1942, § 10265-27; Laws, 1966, ch. 540, § 27, eff from and after July 1, 1966.

Cross References — Prohibition of credit to retailers of light wine and beer, see § 67-3-45.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 94.

CJS. 48A C.J.S., Intoxicating Liquors §§ 695-698.

§ 67-1-81. Sales to minors prohibited; penalties.

(1) Any permittee or other person who shall sell, furnish, dispose of, give, or cause to be sold, furnished, disposed of, or given, any alcoholic beverage to any person under the age of twenty-one (21) years shall be guilty of a misdemeanor and shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) for a first offense. For a second or subsequent offense, such permittee or other person shall be punished by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Two Thousand Dollars ($2,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment in the discretion of the court. Upon conviction of a second offense under the provisions of this

section the permit of any permittee so convicted shall be automatically and permanently revoked.

(2) Any person under the age of twenty-one (21) years who purchases, receives, or has in his or her possession in any public place, any alcoholic beverages, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00). Provided, that clearing or busing tables that have glasses or other containers that contain or did contain alcoholic beverages, or stocking, bagging or otherwise handling purchases of alcoholic beverages shall not be deemed possession of alcoholic beverages for the purposes of this section. Provided further, that a person who is at least eighteen (18) years of age but under the age of twenty-one (21) years who waits on tables by taking orders for or delivering orders of alcoholic beverages shall not be deemed to unlawfully possess or furnish alcoholic beverages if in the scope of his employment by the holder of an on-premises retailer's permit. This exception shall not authorize a person under the age of twenty-one (21) to tend bar or act in the capacity of bartender. Any person under the age of twenty-one (21) who knowingly makes a false statement to the effect that he or she is twenty-one (21) years old or older or presents any document that indicates he or she is twenty-one (21) years of age or older for the purpose of purchasing alcoholic beverages from any person engaged in the sale of alcoholic beverages shall be guilty of a misdemeanor and shall be punished by a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00), and a sentence to not more than thirty (30) days' community service.

(3) The term "community service" as used in this section shall mean work, projects or services for the benefit of the community assigned, supervised and recorded by appropriate public officials.

(4) If a person under the age of twenty-one (21) years is convicted or enters a plea of guilty of purchasing, receiving or having in his or her possession in any public place any alcoholic beverages in violation of subsection (2) of this section, the trial judge, in lieu of the penalties otherwise provided under subsection (2) of this section, shall suspend the minor's driver's license by taking and keeping it in the custody of the court for a period of time not to exceed ninety (90) days. The judge so ordering the suspension shall enter upon his docket "DEFENDANT'S DRIVER'S LICENSE SUSPENDED FOR ________ DAYS IN LIEU OF CONVICTION" and such action by the trial judge shall not constitute a conviction. During the period that the minor's driver's license is suspended, the trial judge shall suspend the imposition of any fines or penalties that may be imposed under subsection (2) of this section and may place the minor on probation subject to such conditions as the judge deems appropriate. If the minor violates any of the conditions of probation, then the trial judge shall return the driver's license to the minor and impose the fines, penalties or both, that he would have otherwise imposed, and such action shall constitute a conviction.

SOURCES: Codes, 1942, § 10265-31; Laws, 1966, ch. 540, § 31; Laws, 1979, ch. 380; Laws, 1992, ch. 460, § 1; Laws, 2009, ch. 350, § 1, eff from and after July 1, 2009.

Cross References — Definition of term "minor," see § 1-3-27.

Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

Prohibition against sale of light wine or beer to persons under the age of 21, see § 67-3-53.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Although Mississippi statutes relating to the sale of alcoholic beverages have sometimes been referred to as the Mississippi Dram Shop Law, such references are misleading because true dram shop acts are civil liability acts wherein the legislature specifically imposes liability on the seller of intoxicating liquors when a third party is injured as a result of the intoxication of the buyer where the sale caused or contributed to such intoxication. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986).

Society has a greater interest in protecting the welfare of minors than other groups listed in §§ 67-3-53(b), 67-1-81 and 67-1-83, because minors comprise a larger segment of society than do the others listed, and the future of society is dependent upon the welfare and protection of its youth. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986).

ATTORNEY GENERAL OPINIONS

Since possession of alcohol or light wine or beer by a minor is not a delinquent act, the youth court does not have original jurisdiction over such offenses. Wiggins, Sept. 19, 2003, A.G. Op. 03-0424.

RESEARCH REFERENCES

ALR. Criminal offense of selling liquor to a minor or permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age. 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift. 14 A.L.R.3d 1186.

Civil Damages Act: liability of one who furnishes liquor to another for consumption by third parties, for injury to or damage caused by consumer. 64 A.L.R.3d 922.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor. 89 A.L.R.3d 1256.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 220 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 345-350.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-1-83. Other prohibited sales; penalty.

(1) It shall be unlawful for any permittee or other person to sell or furnish any alcoholic beverage to any person who is visibly intoxicated, or to any person who is known to habitually drink alcoholic beverages to excess, or to

any person who is known to be an habitual user of narcotics or other habit-forming drugs. It shall also be unlawful for the holder of any package retailer's permit to sell any alcoholic beverages except by delivery in person to the purchaser at the place of business of the permittee.

(2) It shall be unlawful for any permittee or other person to sell or furnish any alcoholic beverage to any person to whom the commission has, after investigation, decided to prohibit the sale of those beverages because of an appeal to the commission so to do by the husband, wife, father, mother, brother, sister, child, or employer of the person. The interdiction in those cases shall last until removed by the commission, but no person shall be held to have violated this subsection unless he has been informed by the commission, by registered letter, that it is forbidden to sell to that individual or unless that fact is otherwise known to the permittee or other person.

(3) It shall be unlawful for any holder of a package retailer's permit, or any employee or agent thereof, engaged solely in the business of package retail sales under this chapter to sell or furnish any alcoholic beverage before 10:00 a.m. and after 10:00 p.m. or to sell alcoholic beverages on Sunday and Christmas Day.

(4) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term of not more than six (6) months or by both that fine and imprisonment, in the discretion of the court. In addition, the commission shall immediately revoke the permit of any permittee who violates the provisions of this section.

SOURCES: Codes, 1942, § 10265-32; Laws, 1966, ch. 540, § 32; Laws, 1972, ch. 508, § 1; Laws, 1977, ch. 485; Laws, 1986, ch. 486, § 2; Laws, 1989, ch. 384, § 2; Laws, 2008, ch. 442, § 18, eff from and after July 1, 2008.

Cross References — Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

Immunity from liability of persons who lawfully furnished or sold intoxicating beverages to one causing damage, see § 67-3-73.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2. No liability.

1. In general.

Prohibition in Mississippi's dram shop statute created liability for the permit holder and any employees of the permit holder, and the parent company, as the sole shareholder of the permit holder, the casino owner, was neither; the family failed to allege any facts to suggest that the corporation had either disregarded corporate formalities or used the corporate form to commit misfeasance, and thus the family did not assert a viable claim against the parent company as required by Miss. R. Civ. P. 12(b). Penn Nat'l Gaming v. Ratliff, — So. 2d —, 2007 Miss. LEXIS 1 (Miss. Jan. 4, 2007), opinion withdrawn by, substituted opinion at, remanded by 954 So. 2d 427, 2007 Miss. LEXIS 229 (Miss. 2007).

There was no indication that the decedent (an adult), was visibly intoxicated in the terms of Miss. Code Ann. §§ 67-1-83(1), 67-3-53, and 67-3-73. The transcripts of the casino's security cameras evidenced that while she drank and gambled, she was ambulatory and conversational and there was nothing in the record to raise a question of fact as to the possibility that she was a habitual drunkard, or known to be insane or mentally defective, in the terms of Miss. Code Ann. §§ 67-1-83(1) and 67-3-53(b); accordingly, summary judgment for the casino was proper. Estate of White v. Rainbow Casino-Vicksburg P'ship, 910 So. 2d 713 (Miss. Ct. App. 2005).

There was no indication that the decedent (an adult), was visibly intoxicated, as defined in Miss. Code Ann. §§ 67-1-83(1), 67-3-53, and 67-3-73. The transcripts of the casino's security cameras evidenced that while she drank and gambled, she was ambulatory and conversational and there was nothing in the record to raise a question of fact as to the possibility that she was a habitual drunkard, or known to be insane or mentally defective, as defined in Miss. Code Ann. §§ 67-1-83(1) and 67-3-53(b); accordingly, summary judgment for the casino was proper. Estate of White v. Rainbow Casino-Vicksburg P'ship, 910 So. 2d 713 (Miss. Ct. App. 2005).

Customer who suffered injuries after voluntarily consuming alcohol is not part of the protected class of Miss. Code Ann. § 67-3-73; therefore, a casino's motion to dismiss a negligence action was properly granted since there was no liability under either § 67-3-73 or Miss. Code Ann. § 67-1-83. Bridges v. Park Place Entm't, Inc., 860 So. 2d 811 (Miss. 2003).

One selling alcohol on the premises, though not an insurer of its guest's safety, has a duty to exercise reasonable care to protect its patrons from reasonably foreseeable injury at the hands of another. Grisham v. John Q. Long VFW Post, No. 4057, Inc., 519 So. 2d 413 (Miss. 1988).

A dispenser of intoxicants is not liable to an adult individual who voluntarily consumes intoxicants and then, by reason of his inebriated condition, injures himself. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986); Gregg v. Four Squires, Ltd., 498 So. 2d 362 (Miss. 1986).

Society has a greater interest in protecting the welfare of minors than other groups listed in §§ 67-3-53(b), 67-1-81 and 67-1-83, because minors comprise a larger segment of society than do the others listed, and the future of society is dependent upon the welfare and protection of its youth. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986).

The public, for example, a third-party class whether minor or adult, is protected under the statute from the negligent acts of an intoxicated person, and has a claim against a person or business furnishing alcoholic beverages in violation of the statute. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986).

Although Mississippi statutes relating to the sale of alcoholic beverages have sometimes been referred to as the Mississippi Dram Shop Law, such references are misleading because true dram shop acts are civil liability acts wherein the legislature specifically imposes liability on the seller of intoxicating liquors when a third party is injured as a result of the intoxication of the buyer where the sale caused or contributed to such intoxication. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986).

Host who provides alcoholic beverage to visibly intoxicated social guest is not liable when guest subsequently causes automobile collision as result of intoxication. Boutwell v. Sullivan, 469 So. 2d 526 (Miss. 1985).

An indictment or affidavit for a violation of a local option law must clearly aver facts showing that the offense was committed in a county or locality where such law was in effect. Benward v. State, 308 So. 2d 94 (Miss. 1975).

A state statute under which various persons, by forbidding in writing the sale or gift of intoxicating liquors to one who, by excessive drinking, produced described conditions or exhibited certain traits, such as exposing himself or his family to want or becoming a danger to the peace of the community, could cause a notice to be posted in local retail liquor outlets prohibiting sales or gifts of liquor to the named person, was violative of procedural due process because of failure to provide for advance notice of such posting and an opportunity to be heard, such posting being to many a stigma or badge of disgrace, exposing an individual to public embarrassment and ridicule. Wisconsin v. Constantineau, 400 U.S. 433, 91 S. Ct. 507, 27 L. Ed. 2d 515 (1971).

2. No liability.

Accident victim's claims against a bar failed because the drunk driver testified at his deposition that he was not served any alcohol by any employee of the bar and did not recall purchasing any "set ups" that night. A bartender testified that she did not see any employee serve the driver any beer that night. Pontillo v. Warehouse Bar & Grill, L.L.C., 19 So. 3d 797 (Miss. Ct. App. 2009).

Parent company of an alcohol permit holder should have been dismissed from a personal injury case because it was not liable under Miss. Code Ann. § 67-1-83 since it was not a permit holder itself or an employee of such; moreover, the pleadings did not adequately state a claim showing that the corporate veil should have been pierced. Penn Nat'l Gaming, Inc. v. Ratliff, 954 So. 2d 427 (Miss. 2007).

There was no indication that the decedent (an adult), was visibly intoxicated, as defined in Miss. Code Ann. §§ 67-1-83(1), 67-3-53, and 67-3-73. The transcripts of the casino's security cameras evidenced that while she drank and gambled, she was ambulatory and conversational and there was nothing in the record to raise a question of fact as to the possibility that she was a habitual drunkard, or known to be insane or mentally defective, as defined in Miss. Code Ann. §§ 67-1-83(1) and 67-3-53(b); accordingly, summary judgment for the casino was proper. Estate of White v. Rainbow Casino-Vicksburg P'ship, 910 So. 2d 713 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

ALR. Admissibility, in prosecution for illegal sale of intoxicating liquor, of other sales. 40 A.L.R.2d 817.

Sale and use of intoxicating liquors at public dance as nuisance. 44 A.L.R.2d 1401.

Contributory negligence allegedly contributing to cause of injury as defense in Civil Damages Act proceeding. 64 A.L.R.3d 849.

Proof of causation of intoxication as a prerequisite to recovery under Civil Damage Act. 64 A.L.R.3d 882.

Civil Damages Act: liability of one who furnishes liquor to another for consumption by third parties, for injury to or damage caused by consumer. 64 A.L.R.3d 922.

Recovery under Civil Damage (Dram Shop) Act for intangibles such as mental anguish, embarrassment, loss of affection or companionship, or the like. 78 A.L.R.3d 1199.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another. 97 A.L.R.3d 528.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damage acts. 98 A.L.R.3d 1230.

Choice of law as to liability of liquor seller for injuries caused by intoxicated person. 2 A.L.R.4th 952.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence. 62 A.L.R.4th 16.

Validity, construction, and effect of statute limiting amount recoverable in dram shop action. 78 A.L.R.4th 542.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 216 et seq.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 299.1 (Head-on collision — Intoxicated driver driving in wrong direction — By decedent's representative — Against tavern).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 151 et seq. (civil incidents and liabilities).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Form 151.1 (complaint, petition, or declaration — against liquor dealer — wrongful death — defendant driver intoxicated).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Form 167.1 (Complaint, petition, or declaration — Against sponsor of function where alcohol was served — Collision between intoxicated attendee and another car — For personal injuries).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Form 181.1 (Complaint, petition, or declaration — Against liquor dealer — Death caused by illegal sale of intoxicating liquor — Automobile collision — Another form).

32 Am. Jur. Proof of Facts 2d 357, Tavern Keeper's Liability Under Dramshop Act.

CJS. 48 C.J.S., Intoxicating Liquors §§ 341 et seq.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-1-85. Regulation of advertising and display of alcoholic beverages.

(1) The holder of a package retailer's permit may have signs, lighted or otherwise, on the outside of the premises covered by his permit which advertise, announce or advise of the sale of alcoholic beverages in or on said premises. Wherever the sign is located on the premises, the name of the business shall also include the permit number thereof, preceded by the words "A.B.C. Permit No."

(2) It shall be lawful to advertise alcoholic beverages by means of signs, billboards or displays on or along any road, highway, street or building.

(3) It shall be lawful for publishers, broadcasters and other kinds, types or forms of public and private advertising media to advertise alcoholic beverages; provided, however, that no alcoholic beverages may be advertised during, or within five (5) minutes preceding or following, any television broadcast which consists primarily of animated material intended for viewing by young children.

(4) Notwithstanding the provisions of this section to the contrary, it shall be unlawful for any advertisement of alcoholic beverages to originate in any municipality, county or judicial district which has not voted pursuant to the provisions of this chapter to legalize the sale of alcoholic beverages, and it shall also be unlawful in such municipalities, counties and judicial districts to advertise alcoholic beverages by means of signs, billboards or displays.

SOURCES: Codes, 1942, § 10265-33; Laws, 1966, ch. 540, § 33; Laws, 1968, ch. 592, § 1; Laws, 1971, ch. 350, § 1; Laws, 1982, ch. 419; Laws, 1986, ch. 450, § 1; Laws, 1988, ch. 562, § 2; Laws, 1990, ch. 569, § 5, eff from and after passage (approved April 9, 1990).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 A.L.R.4th 600.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 196-199.

CJS. 48 C.J.S., Intoxicating Liquors §§ 293 et seq.

§ 67-1-87. General penalty provision.

(1) Any person convicted of a violation of any of the provisions of this chapter for which no other penalty is specifically provided herein shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

(2) Any person convicted of a violation of any rules or regulations promulgated by the commission under the authority of this chapter shall be subject to a civil penalty to be assessed by the commission in an amount not to exceed One Thousand Dollars ($1,000.00) to be deposited into the State General Fund.

SOURCES: Codes, 1942, § 10265-38; Laws, 1966, ch. 540, § 38; Laws, 1992, ch. 459, § 3, eff from and after July 1, 1992.

Cross References — Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Criminal penalties for violating general prohibition laws, see §§ 97-31-27 et seq.

Imposition of standard state assessment in addition to all court-imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Recovery of cumulative statutory penalties. 71 A.L.R.2d 986.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 338 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 401 et seq.

§ 67-1-89. Injunctive relief.

In addition to any other rights and remedies which it may have, the commission, in the name of the chairman thereof, shall have the right to resort to and apply for injunctive relief, both temporary and permanent, in any court of competent jurisdiction to enforce compliance with the provisions of this chapter and to restrain and prevent violations and threatened violations thereof. The Attorney General, district attorneys and county attorneys of this state, shall aid and assist the commission in all such actions when requested by the chairman so to do.

SOURCES: Codes, 1942, § 10265-34; Laws, 1966, ch. 540, § 34, eff from and after July 1, 1966.

Cross References — Seizure without process of property subject to forfeiture because of unlawful possession of alcoholic beverages, see § 67-1-17.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 359 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Form 134 (order granting preliminary injunction against selling liquor on premises).

CJS. 48A C.J.S., Intoxicating Liquors §§ 601 et seq.

§ 67-1-91. Enforcement.

(1) It is hereby made the duty of every police and peace officer and every district and county attorney and the Alcoholic Beverage Control Division of the State Tax Commission to enforce the provisions of this chapter and to inform against and diligently prosecute persons whom they have reasonable cause to believe to be offenders against the provisions thereof. Every such officer refusing or neglecting to do so shall be guilty of a misdemeanor, and the court, in addition to imposing the penalty therefor, shall adjudge forfeiture of his office.

(2) In any county or municipality where it is readily apparent that local law enforcement authorities in cooperation with the agents and inspectors provided by the commission cannot control the illegal sale of alcoholic beverages, the commission shall request such assistance as it may deem necessary from the Mississippi Highway Safety Patrol; and it shall be the duty of the Governor of the State of Mississippi to see that the laws of the state are properly enforced by use of the additional authority as herein provided.

(3) The officers, agents and representatives of the State Tax Commission and the Alcoholic Beverage Control Division thereof are authorized and directed to strictly enforce the prohibition laws throughout the state, except in those counties and municipalities which have voted for the legalized sale of intoxicating liquor. The State Highway Patrol, sheriffs, police departments, constables, and all peace officers, and prosecuting attorneys, the Attorney General's office, district attorneys, county attorneys, city attorneys, and all others charged with upholding the law, as well as the citizenry of this state, are hereby urged and directed to uphold the dignity of the law, to foster public respect therefor and to strictly enforce the laws against intoxicating liquor in all cases while operating a motor vehicle on the streets and highways of this state, and to enforce the law and prosecute against the wrongful use of intoxicating liquor in any county or municipality by a permit holder or licensee or anyone else under such circumstances and conditions as would lead to a breakdown in public law or is violative of the public sense of common decency, as well as to enforce the law against gambling, organized crime, or social vice and corruption.

SOURCES: Codes, 1942, §§ 10265-03, 10265-11, 10265-37; Laws, 1966, ch. 540, §§ 3, 11, 37; Laws, 1990, ch. 569, § 6, eff from and after passage (approved April 9, 1990).

Cross References — Authority of officers to seize property subject to forfeiture for unlawful possession of alcoholic beverages, see § 67-1-17.

JUDICIAL DECISIONS

1. In general.

Where the ABC Division had been informed by a trusted former employee that he had personally seen the defendant, who had been repeatedly convicted of violating the prohibition laws, enter a liquor package store empty-handed and had personally seen him depart therefrom with a brown bag full of purchases, and agents did not attempt to stop the defendant in Hinds County which is wet, but attempted to stop him and to check his purchases on a road in Rakin County which is dry, there was probable cause for the agents to stop the defendant and to search his car. Allison v. State, 274 So. 2d 678 (Miss. 1973).

An agent of the alcoholic beverage control division did not have authority to serve a search warrant issued for the purpose of making a search for illegal gambling equipment, since such agents have no police powers other than those expressly granted by the provisions of the local option alcoholic beverage control law. Presley v. State, 229 So. 2d 830 (Miss. 1969).

Inasmuch as Code 1942, § 10265-05 excludes from the definition of "alcoholic beverage" beer and wine of not more than 4 percent of alcohol by weight, the authority conferred upon agents of the alcoholic beverage commission under Code 1942, §§ 10265-11 and 10265-17 does not authorize and empower them to check a retailer's beer license to see whether it was in date or to inspect beer stock to determine whether it was Mississippi-taxed beer. Jolliff v. State, 215 So. 2d 234 (Miss. 1968), but see Cumbest v. Commissioners of Election, 416 So. 2d 683 (Miss. 1982).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 261 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 111-134 (enforcement of restrictions and regulations).

CJS. 48 C.J.S., Intoxicating Liquors §§ 413 et seq.

§ 67-1-93. Petition for forfeiture of property other than alcoholic beverages and raw materials; service upon owner, secured or interested party; compliance with procedures.

(1) Except as otherwise provided in Section 67-1-99, when any property, other than an alcoholic beverage or raw material, is seized under this chapter or Chapter 31 of Title 97, Mississippi Code of 1972, proceedings under this section shall be instituted promptly.

(2) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi with the clerk of the circuit or county court of the county in which the seizure is made. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(a) The owner of the property, if address is known;

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the agent or agency which seized the property making a good faith effort to ascertain the identity of such secured party as described in subsections (3), (4), (5), (6) and (7) of this section;

(c) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the agent or agency has actual knowledge; and

(d) Any person in possession of property subject to forfeiture at the time that it was seized.

(3) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the agent or agency shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(4) If the property is a motor vehicle and is not titled in the State of Mississippi then the agent or agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the agent or agency shall make inquiry of the appropriate agency of that state to determine through such agency's records the name of the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.

(5) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the agent or agency shall make inquiry of the appropriate office designated in Section 75-9-501 to determine through the records of such office the name of the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(6) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the agent or agency shall make inquiry of the Administrator of the Federal Aviation Administration to determine through records of the administrator the name of the record owner of the property and who, if anyone, holds an instrument in the name of a security device which affects the property.

(7) In the case of all other property other than an alcoholic beverage or raw material subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the agent or agency shall make a good faith inquiry to identify the holder of any such instrument.

(8) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, security interest or other interest in the nature of a security interest which affects the property, the agent or agency shall cause any record owner and also any lienholder, secured party or other person who holds an interest in the property in the nature of a security interest which affects the property to be named in the

petition of forfeiture and to be served with process in the same manner as in civil cases.

(9) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the agent or agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of ________," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall be made in accordance with the Mississippi Rules of Civil Procedure.

(10) No proceedings instituted pursuant to the provisions of this chapter shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (3) through (7) of this section shall be introduced into evidence at the hearing.

SOURCES: Laws, 1984, ch. 424, § 3; Laws, 1990, ch. 451, § 1; Laws, 1991, ch. 573, § 117; Laws, 2001, ch. 495, § 26, eff from and after Jan. 1, 2002.

Cross References — Mississippi State Tax Commission, generally, see §§ 27-3-1 et seq.

Motor vehicle titles and registration, generally, see §§ 63-21-1 et seq.

Security interests in motor vehicles, see §§ 63-21-41 et seq.

Notice of sale to last known registered owner of abandoned motor vehicle, see § 63-23-9.

Seizure, detention, and disposal of alcoholic beverages, raw materials, and other property seized, see § 67-1-17.

Administrative forfeiture of property, see § 67-1-99.

JUDICIAL DECISIONS

1. In general.

Sections 67-1-17, 67-1-93, 67-1-95 and 67-1-97, which govern the seizure and disposal of personal property which is in violation of the prohibition law, do not provide for the return of the property prior to a hearing on the forfeiture proceeding. Thus, a defendant was not entitled to the return of her seized car pending the outcome of the forfeiture hearing where the defendant admitted that the intoxicating liquors being transported in her automobile belonged to her, and that she was in the vehicle and was participating in the actual transportation of the contraband. Mississippi State Tax Comm'n v. One (1) 1984 Black Mercury Grand Marquis, 568 So. 2d 707 (Miss. 1990).

RESEARCH REFERENCES

ALR. Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding. 8 A.L.R.3d 473.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 A.L.R.3d 172.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 14 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 53 et seq.

§ 67-1-95. Owner's verified answer; forfeiture hearing; burden of proof; rights of holders of security interests, liens, or other interests; disposition of property.

(1) An owner of property seized, other than an owner of alcoholic beverages or raw materials, shall file a verified answer within twenty (20) days after the completion of service of process. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the agency which seized the property. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the agent or agency, or the owner of the property, the court may postpone the forfeiture hearing to a date past the time any criminal action is pending against such owner.

(2) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture, then the burden is on the state to prove that the property is subject to forfeiture; however, if no answer had been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and shall be prima facie evidence that the property is subject to forfeiture.

(3) At the hearing any claimant of any right, title or interest in the property may prove his lien, security interest or other interest in the nature of a security interest, to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(4) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the agency which seized the property. If proof at the hearing discloses that the interest of any bona fide lienholder, secured party or other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture the court shall order the property forfeited to the agency.

(5) Upon a petition filed in the name of the state of Mississippi with the clerk of the circuit or county court of the county in which the seizure is made, the court having jurisdiction may order the property summarily forfeited except when lawful possession and title can be ascertained. If a person is found to have had lawful possession and title prior to seizure, the court shall order the property returned to the owner, if the owner so desires.

SOURCES: Laws, 1984, ch. 424, § 4, eff from and after passage (approved April 23, 1984).

Cross References — Motor vehicle titles and registration, generally, see §§ 63-21-1 et seq.

Security interests in motor vehicles, see §§ 63-21-41 et seq.

Seizure, detention, and disposal of alcoholic beverages, raw materials, and other property seized, see § 67-1-17.

JUDICIAL DECISIONS

1. In general.

Sections 67-1-17, 67-1-93, 67-1-95 and 67-1-97, which govern the seizure and disposal of personal property which is in violation of the prohibition law, do not provide for the return of the property prior to a hearing on the forfeiture proceeding. Thus, a defendant was not entitled to the return of her seized car pending the outcome of the forfeiture hearing where the defendant admitted that the intoxicating liquors being transported in her automobile belonged to her, and that she was in the vehicle and was participating in the actual transportation of the contraband. Mississippi State Tax Comm'n v. One (1) 1984 Black Mercury Grand Marquis, 568 So. 2d 707 (Miss. 1990).

RESEARCH REFERENCES

ALR. Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding. 8 A.L.R.3d 473.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 A.L.R.3d 172.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 14 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 52 et seq.

§ 67-1-97. Public auction of forfeited property other than alcoholic beverages and raw materials; disbursement of proceeds.

(1) All property other than alcoholic beverages or raw materials that have been forfeited shall be sold at a public auction for cash by the agency which seized such property to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation throughout the state of Mississippi. Such notices shall contain a description of the property to be sold and a statement of the time and place of the sale. It shall not be necessary to the validity of such sale either to have the property present at the place of the sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be delivered to the court clerk and shall be disposed of as follows:

(a) To any bona fide lienholder, secured party or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, after deduction of all storage and court costs, shall be forwarded to the state treasurer and deposited with and used as general funds of the state.

(2)(a) Any county or municipal law enforcement agency which seizes property, other than alcoholic beverages or raw materials, may maintain, repair, use and operate for official purposes all such property that has been forfeited if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. Such county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (4) of this section.

(b) All other property that a county or municipal law enforcement agency seizes, other than alcoholic beverages and raw materials, and other than property which such law enforcement agency retains for use and operation for official purposes, shall, upon its forfeiture, be sold by such law enforcement agency in the same manner and subject to the same procedure for the sale of such property as provided for in subsection (1) of this section; however, the proceeds of such sale shall be delivered to the clerk of the county or municipality for disposal in the following manner:

(i) To any bona fide lienholder, secured party or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(ii) The balance, if any, after deduction of all storage and court costs, shall be forwarded to the clerk of the county or municipality, as the case may be, and deposited with and used as general funds of the county or municipality.

(3) All other agencies which have seized all such property other than alcoholic beverages and raw materials may maintain, repair, use and operate for official purposes all property that has been forfeited to them if such property is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. In such case, the agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for use by such agency.

Such agency may maintain, repair, use and operate the property with money appropriated for current operations. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, such agency is deemed to be the purchaser and the certificate of title shall be issued to it as required by subsection (4) of this section.

(4) The State Tax Commission shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

SOURCES: Laws, 1984, ch. 424, § 5, eff from and after passage (approved April 23, 1984).

Cross References — Mississippi State Tax Commission, generally, see §§ 27-3-1 et seq.

Role of Mississippi State Tax Commission in seizure of and disposition of property subject to forfeiture for unlawful possession of alcoholic beverages and related property, see §§ 67-1-17, 67-1-18.

Seizure, detention, and disposal of alcoholic beverages, raw materials, and other property seized, see § 67-1-17.

Role of Mississippi State Tax Commission in release, sale, or destruction of alcoholic beverages and raw materials seized under alcoholic beverage control law, see § 67-1-18.

Administrative forfeiture of property, see § 67-1-99.

JUDICIAL DECISIONS

1. In general.

Sections 67-1-17, 67-1-93, 67-1-95 and 67-1-97, which govern the seizure and disposal of personal property which is in violation of the prohibition law, do not provide for the return of the property prior to a hearing on the forfeiture proceeding. Thus, a defendant was not entitled to the return of her seized car pending the outcome of the forfeiture hearing where the defendant admitted that the intoxicating liquors being transported in her automobile belonged to her, and that she was in the vehicle and was participating in the actual transportation of the contraband. Mississippi State Tax Comm'n v. One (1) 1984 Black Mercury Grand Marquis, 568 So. 2d 707 (Miss. 1990).

RESEARCH REFERENCES

ALR. Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding. 8 A.L.R.3d 473.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 A.L.R.3d 172.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 14 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 53 et seq.

§ 67-1-99. Administrative forfeiture of certain property.

(1) Property subject to forfeiture, other than alcoholic beverages or raw materials, as described by Section 67-1-17 and having a value of Two Thousand Five Hundred Dollars ($2,500.00) or less may be forfeited by the administrative forfeiture procedures provided for in this section.

(2) The seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, by certified mail, return receipt required, to all persons who are required to be notified pursuant to Section 67-1-93.

(3) In the event that notice of administrative forfeiture cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure took place once a week for three (3) consecutive weeks.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

(a) A description of the property;

(b) The approximate value of the property;

(c) The date and place of the seizure;

(d) The connection between the property and the violation of the Local Option ABC Laws or Chapter 31, Title 97, Mississippi Code of 1972;

(e) The instructions for filing a request for judicial review; and

(f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(5) Persons claiming an interest in the seized property may initiate judicial review of the seizure and proposed forfeiture by filing a written request for judicial review with the chief law enforcement officer of the seizing law enforcement agency within thirty (30) days after receipt of the certified letter or within thirty (30) days after the first publication of notice, whichever is applicable.

(6) If no request for judicial review is timely filed, the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, disposed of, or distributed in accordance with the provision of Section 67-1-97.

(7) Upon receipt of a timely request for judicial review, the attorney for the seizing law enforcement agency shall promptly file a petition for forfeiture and proceed as provided in Section 67-1-93.

SOURCES: Laws, 1990, ch. 451, § 2; Laws, 1991, ch. 372, § 1, eff from and after passage (approved March 15, 1991).

CHAPTER 3

Sale of Light Wine, Beer, and Other Alcoholic Beverages

Sec.
67-3-1. Declaration of purpose.
67-3-3. Definitions.
67-3-5. Light wines and beer legalized.
67-3-7. Local option elections in county.
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67-3-15. Permit and/or license required.
67-3-17. Application for permit; oath.
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67-3-45. Loans and extension of credit to retailers prohibited; brewpub exemption.
67-3-46. Manufacturers of light wines or beer prohibited from acting as wholesalers or distributors.
67-3-47. Manufacturer of beer operating brewery permitted to provide limited amounts of beer on premises for tasting or sampling subject to certain conditions.
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67-3-51. Sales from other than original containers prohibited; exception.
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67-3-54. Exemption for person over age 18 but less than 21; parental consent; military personnel; employee of establishment licensed to sell light wine or beer.
67-3-55. Possession or sale of light wine or beer not purchased from licensed or authorized manufacturer or wholesaler prohibited; brewpub exemption; breweries providing beer on premises for tasting or sampling exemption.
67-3-57. Possession or sale of light wine or beer before permit secured or during time of revocation or suspension prohibited.

67-3-59. Penalty for sales to persons not holding permits and sales of untaxed wine or beer; notice; disposition of proceeds.
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67-3-67. Transportation of light wines and beer not to be interfered with.
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67-3-73. Immunity from liability of persons who lawfully furnished or sold intoxicating beverages to one causing damage.
67-3-74. Enforcement of certain provisions by officers of the division.
67-3-75. Repealed.

§ 67-3-1. Declaration of purpose.

The purpose of this chapter is to legalize the sale within this state of light wines and beer, to legalize the manufacture of beer, and to regulate the business of manufacturing and of selling light wines and beer so as to prevent the illicit manufacture, sale and consumption of alcoholic beverages as defined in Section 67-1-5, the manufacture and sale of which it is not the purpose of this chapter to legalize.

SOURCES: Codes, 1942, § 10211; Laws, 1934, ch. 171; Laws, 1998, ch. 306, § 3; Laws, 2012, ch. 323, § 3; Laws, 2012, ch. 501, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 1 of Chapter 501, Laws of 2012, effective July 1, 2012 (approved April 30, 2012), amended this section. Section 3 of Chapter 323, Laws of 2012, effective July 1, 2012 (approved April 5, 2012), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 501, Laws of 2012, which contains language that specifically provides that it supersedes § 67-3-1 as amended by Laws of 2012, ch. 323.

Amendment Notes — The first 2012 amendment (ch. 323), deleted "of an alcoholic content of not more than five percent (5%) by weight" following "state of light wines and beer," substituted "selling light wines and beer" for "selling such liquors" and substituted "consumption of alcoholic beverages as defined in Section 67-1-5" for "consumption of liquors having an alcoholic content of more than five percent (5%) by weight."

The second 2012 amendment (ch. 501), deleted "manufacture and" following "legalize the," deleted "of an alcoholic content of not more than five percent (5%) by weight" following "state of light wines and beer," inserted "to legalize the manufacture of beer," substituted "selling light wines and beer" for "selling such liquors" and substituted "consumption of alcoholic beverages as defined in Section 67-1-5" for "consumption of liquors having an alcoholic content of more than five percent (5%) by weight."

Cross References — Labeling requirements for light wines and beer, see § 27-71-509.

Local option alcohol beverage control law, see §§ 67-1-1 et seq.

Regulation of relations between wholesalers and suppliers of light beer and wine, see §§ 67-7-1 et seq.

Intoxicating beverage offenses generally, see §§ 97-31-5 et seq.

Prosecutions for intoxicating beverage offenses generally, see §§ 99-27-1 et seq.

JUDICIAL DECISIONS

1. In general.

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. Martin v. State, 501 So. 2d 1124 (Miss. 1987).

ATTORNEY GENERAL OPINIONS

The matter of issuing permits and the investigation of the validity of information presented in permit applications for the manufacture, sale, distribution, possession, and transportation of light wines and beer is strictly within the province of the State Tax Commission and a municipality has no power to act to block, prevent, restrict, refuse, or revoke alcoholic beverage permits; however, there is certainly nothing to prohibit interested parties from forwarding information they may consider relevant to the issuance or suspension or revocation of a permit to the attention of the State Tax Commission, the district attorney, or the county prosecuting attorney, as the situation demands. Thomas, April 10, 1998, A.G. Op. #98-0142.

A city cannot enact regulations to require that the applicant for a beer and/or light wine permit is the actual owner of the business, that the owner or the owner's employees do not have a criminal records, or to require that the applicant and employees be fingerprinted and photographed. Thomas, April 10, 1998, A.G. Op. #98-0142.

A municipality may not adopt an ordinance which would further regulate the sale of intoxicating liquors by requiring commercial establishments holding a valid permit issued by the State Tax Commission to sell such beverages to achieve a mandatory ratio of food sales to alcoholic beverage sales. Rutledge, June 5, 1998, A.G. Op. #98-0278.

A city has no authority to require a retailer who has been issued a permit for the sale of beer and light wine by the State Tax Commission to also make application and pay for a second, "city" permit, separate and in addition to a local privilege license, as a condition of engaging in the sale of such beverages within the city; the only permits required by state law are not granted by municipalities but by the State Tax Commission. Lee, October 23, 1998, A.G. Op. #98-0661.

RESEARCH REFERENCES

ALR. Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon. 98 A.L.R.3d 694.

§ 67-3-3. Definitions.

When used in this chapter, unless the context indicates otherwise:

(a) "Commissioner" means the Commissioner of Revenue of the Department of Revenue of the State of Mississippi, and his authorized agents and employees;

(b) "Person" means one or more persons, a company, a corporation, a partnership, a syndicate or an association;

(c) "Manufacturer" and "retailer" include brewpubs licensed pursuant to Article 3, Chapter 71, Title 27, Mississippi Code of 1972, unless otherwise clearly provided;

(d) "Beer" means a malt beverage as defined in the Federal Alcohol Administration Act and any rules and regulations adopted pursuant to such act of an alcoholic content of not more than eight percent (8%) by weight; and

(e) "Light wine" means wine of an alcoholic content of not more than five percent (5%) by weight.

SOURCES: Codes, 1942, § 10210; Laws, 1934, ch. 171; Laws, 1998, ch. 308, § 8; Laws, 2003, ch. 322, § 1; Laws, 2009, ch. 492, § 136; Laws, 2012, ch. 323, § 1, eff from and after July 1, 2012.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2012 amendment added "of an alcoholic content of not more than eight percent (8%) by weight; and" to the end of (d); added (e); and made minor stylistic changes.

Cross References — Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

Federal Aspects — Federal Alcohol Administration Act, see 27 USCS §§ 201 et seq.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 3 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 1 et seq.

§ 67-3-5. Light wines and beer legalized.

(1) It shall be lawful, subject to the provisions set forth in this chapter, in this state to transport, store, sell, distribute, possess, receive and/or manufacture wine and beer, and it is hereby declared that it is the legislative intent that this chapter privileges the lawful sale and manufacture, within this state, of such light wines and beer. In determining if a wine product is "light wine," or contains an alcoholic content of more than five percent (5%) by weight, or is not an "alcoholic beverage" as defined in the Local Option Alcoholic Beverage Control Law, Chapter 1 of Title 67, Mississippi Code of 1972, the alcoholic content of such wine product shall be subject to the same permitted tolerance as is allowed by the labeling requirements for light wine provided for in Section 27-71-509.

(2) Subject to the provisions set forth in this chapter, it shall be lawful in this state to transport, store, sell, distribute, possess, receive, and/or manufacture beer of an alcoholic content of more than eight percent (8%) by weight, if the beer is manufactured to be sold legally in another state and is transported outside of this state for retail sale.

SOURCES: Codes, 1942, §§ 10207, 10228; Laws, 1934, ch. 171; Laws, 1987, ch. 355, § 2; Laws, 1998, ch. 306, § 4; Laws, 2012, ch. 323, § 4; Laws, 2012, ch. 501, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 2 of Chapter 501, Laws of 2012, effective July 1, 2012 (approved April 30, 2012), amended this section. Section 4 of Chapter 323, Laws of 2012, effective July 1, 2012 (approved April 5, 2012), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 501, Laws of 2012, which contains language that specifically provides that it supersedes § 67-3-5 as amended by Laws of 2012, ch.323.

Amendment Notes — The first 2012 amendment (ch. 323), deleted "of an alcoholic content of not more than five percent (5%) by weight" following "manufacture wine and beer" in the first sentence.

The second 2012 amendment (ch. 501), added (2) deleted "of an alcoholic content of not more than five percent (5%) by weight" following "manufacture wine and beer" in the first sentence; and

Cross References — Information concerning alcohol content of light wines and beer, to be displayed on labels or containers of those commodities, see § 27-71-509.

Local option alcohol beverage control law, see §§ 67-1-1 et seq.

Definition of "alcoholic beverage," see § 67-1-5.

Application of definition of light wine and beer to Beer Industry Fair Dealing Act, see § 67-7-5.

Rule making it unlawful to manufacture intoxicating liquors, see §§ 97-31-21 et seq.

Rule making it unlawful to possess or sell intoxicating liquors, see § 97-31-27.

JUDICIAL DECISIONS

1. In general.
2. Construction.
3. Indictment.
4. Evidence.

1. In general.

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. Martin v. State, 501 So. 2d 1124 (Miss. 1987).

The legislature had the power to enact statute authorizing sale of beer within the state and also authorizing county by election to prohibit the sale of beer within that county. Hays v. State, 219 Miss. 808, 69 So. 2d 845 (1954).

Enactment of statute legalizing sale and possession of beer pending appeal from conviction for possessing beer and intoxicating liquor, held without effect upon conviction. Brown v. State, 170 Miss. 86, 153 So. 302 (1934), error overruled, 153 So. 175 (Miss. 1934).

2. Construction.

Section 67-3-13 did not deny a defendant, who was convicted of possession of beer in a "dry" part of the county while traveling home after having legally purchased the beer in a "wet" city, equal protection under the laws and constitution of the State of Mississippi and the Constitution of the United States, nor was there any invasion of the defendant's constitutional right of privacy. Dantzler v. State, 542 So. 2d 906 (Miss. 1989).

Chapter relating to wine and beer repealed statute making it unlawful to sell beer. Hays v. State, 219 Miss. 808, 69 So. 2d 845 (1954).

Court must consider statute legalizing sale of wine and beer as an entirety and effect must be given to each part of statute, so as to fulfill intent of legislature. Alexander v. Graves, 178 Miss. 583, 173 So. 417 (1937).

3. Indictment.

Where an indictment charged only that the accused did unlawfully sell intoxicating liquor, namely home brew, and there was no allegation that the sale of beer has been outlawed by an election in the county, the indictment was insufficient because no crime was stated. Riley v. State, 212 Miss. 746, 55 So. 2d 447 (1951).

4. Evidence.

Evidence that defendant's place of business had a reputation of being place where intoxicating liquors were sold was properly excluded in a prosecution for unlawful possession of beer. State v. Sisk, 209 Miss. 174, 46 So. 2d 191 (1950).

In prosecution for unlawful possession of intoxicating liquor the affidavit must allege and the proof must show an alcoholic content in excess of 4 per cent by weight. Hall v. State, 199 Miss. 560, 24 So. 2d 780 (1946).

Mere fact that the malt liquor or beer may be intoxicating does not of necessity show that the alcoholic content exceeded 4 per cent by weight. Hall v. State, 199 Miss. 560, 24 So. 2d 780 (1946).

Refusal of requested instruction in prosecution for unlawful possession of intoxicating liquor submitting to jury the factual issue whether the malt liquor or beer contained over the maximum alcoholic content of 4 per cent by weight, constituted reversible error, where the testimony, although showing that the liquor or beer was intoxicating, did not disclose what percentage of alcohol by weight it contained. Hall v. State, 199 Miss. 560, 24 So. 2d 780 (1946).

Evidence that accused believed wine in his possession did not contain over four per cent of alcohol, was inadmissible. Lowe v. City of Jackson, 181 Miss. 296, 179 So. 568 (1938).

The intent of possessor of wine having an alcoholic content of more than 4% is immaterial. Lowe v. City of Jackson, 181 Miss. 296, 179 So. 568 (1938).

§ 67-3-7. Local option elections in county.

(1) If any county, at an election held for the purpose under the election laws of the state, shall by a majority vote of the duly qualified electors voting in the election determine that the transportation, storage, sale, distribution, receipt and/or manufacture of wine and beer shall not be permitted in such county, then the same shall not be permitted therein except as authorized under Section 67-9-1 and as may be otherwise authorized in this section. An election to determine whether such transportation, storage, sale, distribution, receipt and/or manufacture of such beverages shall be excluded from any county in the state, shall, on a petition of twenty percent (20%) of the duly qualified electors of such county, be ordered by the board of supervisors of the county, for such county only. No election on the question shall be held in any one county more often than once in five (5) years.

In counties which have elected, or may elect by a majority vote of the duly qualified electors voting in the election, that the transportation, storage, sale, distribution, receipt and/or manufacture of wine or beer shall not be permitted in the county, an election may be held in the same manner as the election hereinabove provided on the question of whether or not the transportation, storage, sale, distribution, receipt and/or manufacture of said beverages shall be permitted in such county. Such election shall be ordered by the board of supervisors of such county on a petition of twenty percent (20%) of the duly qualified electors of such county. No election on this question can be ordered more often than once in five (5) years.

(2) Nothing in this section shall make it unlawful to possess beer or wine, as defined herein, in any municipality which has heretofore or which may hereafter vote in an election, pursuant to Section 67-3-9, in which a majority of the qualified electors vote in favor of permitting the sale and the receipt, storage and transportation for the purpose of sale of beer or wine as defined herein.

(3) Nothing in this section shall make it unlawful to:

(a) Possess or consume light wine or beer at a qualified resort area as defined in Section 67-1-5;

(b) Sell, distribute and transport light wine or beer to a qualified resort area as defined in Section 67-1-5;

(c) Sell light wine or beer at a qualified resort area as defined in Section 67-1-5 if such light wine or beer is sold by a person with a permit to engage in the business as a retailer of light wine or beer;

(d) Transport beer of an alcoholic content of more than eight percent (8%) by weight if it is being transported to another state for legal sale in that state.

SOURCES: Codes, 1942, § 10208; Laws, 1934, ch. 171; Laws, 1942, ch. 224; Laws, 1956, ch. 252; Laws, 1958, ch. 279; Laws, 1996, ch. 417, § 9; Laws, 1998, ch. 306, § 5; Laws, 2004, ch. 397, § 5; Laws, 2012, ch. 323, § 5; Laws, 2012, ch. 501, § 3, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 3 of Chapter 501, Laws of 2012, effective July 1, 2012 (approved April 30), amended this section. Section 5 of Laws of 2012, effective July 1, 2012 (approved April 5, 2012), also amended this section. As set out above, this section reflects the language of Section 3 of Chapter 501, Laws of 2012, which contains language that specifically provides that it supersedes § 67-3-7 as amended by Laws of 2012, ch. 323.

Amendment Notes — The first 2012 amendment (ch. 323), in (1), deleted "of an alcoholic content of not more than five percent (5%) by weight" following "wine and beer" in the first sentence of the first paragraph, and following 'wine and beer' in the first sentence of the second paragraph, substituted "of the county" for "thereof" near the end of the second sentence of the first paragraph, and made minor stylistic changes.

The second 2012 amendment (ch. 501), in (1), deleted "of an alcoholic content of not more than five percent (5%) by weight" following "wine and beer" in the first sentence of the first paragraph, and following "wine and beer" in the first sentence of the second paragraph, substituted "of the county" for "thereof" near the end of the second sentence of the first paragraph, and made minor stylistic changes; and added (3)(d).

Cross References — Petition of qualified electors for county election, see § 19-3-55.

Elections under local option alcohol beverage control law, see §§ 67-1-11 to 67-1-15.

JUDICIAL DECISIONS

1. In general.
2. Signatures to petition.
3. Findings of jurisdictional facts.
4. —Conclusiveness.
5. Notice of election.
6. Matters submitted.
7. Ballots.
8. Qualifications of electors.
9. Judicial review.
10. Frequency of elections.
11. Miscellaneous.

1. In general.

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. Martin v. State, 501 So. 2d 1124 (Miss. 1987).

Chapter 279, Laws of 1958, is constitutional and valid, and states an enforceable and definite offense. Kelly v. State, 237 Miss. 112, 113 So. 2d 540 (1959).

Omission of the phrase "as amended" in referring to the statute in petitions to the board of supervisors, upon which a local option election was held under Chapter 252, Laws of 1956, asking that the board call an election to submit to the electors the proposition of whether or not wines and beer should continue to be sold, transported, stored, distributed, received or manufactured in the named county, as provided by Code 1942, § 10208, did not constitute such substantial defect or error in the jurisdiction of the board as to warrant reversal and nullification of the election, where the voters were not misled at the election, and the correct proposition had been submitted to them. Stennis v. Board of Supvrs., 232 Miss. 212, 98 So. 2d 636 (1957).

Although county in which city was located had voted out beer under this section in 1939, this would not prevent city from holding an election under Code 1942, § 10208.5, to determine whether or not beer could be sold therein; chapter 252, Laws of 1956, neither expressly nor by implication repealed Code 1942, § 10208.5. Lee County Drys v. Anderson, 231 Miss. 222, 95 So. 2d 224 (1957).

The legislature had the power to enact statute authorizing sale of beer within the state and also authorizing county by election to prohibit the sale of beer within that county. Hays v. State, 219 Miss. 808, 69 So. 2d 845 (1954).

Where the ordinance of a board of supervisors prohibited the sale and consumption of wines and beer in all territory of the county within five miles of any church, school, storehouse, filling station or any other public place, the ordinance was unreasonable because it usurped the function of electorate to decide the question of determining whether the entire county should be wet or dry. State v. Hoyle, 211 Miss. 342, 51 So. 2d 730 (1951).

Early decision of Martin v. Board of Supervisors (1938) 181 Miss 363, 178 So 315, on subject of outlawing beer and wine by local option election, which has stood as law of state for more than eleven years and has been relied upon by boards of supervisors in many counties and which cannot be said to be manifestly wrong or mischievous in operation, will be adhered to as established law of state, although question of whether it is necessary jurisdictional fact to be adjudicated by board of supervisors that no election on beer and wine has been held within past five years was not raised or passed upon by court in that case. Caruthers v. Panola County, 205 Miss. 403, 38 So. 2d 902 (1949).

A municipality has no power to enact an ordinance prohibiting possession of wines and beers as herein permitted for personal consumption. City of Amory v. Yielding, 203 Miss. 265, 34 So. 2d 726 (1948).

Primary election laws are not applicable to the general election required to be held on petition for an election on the question of prohibiting the transportation, sale, etc., of light wines and beer within a county. Miles v. Board of Supvrs., 33 So. 2d 810 (Miss. 1948).

Board of supervisors, after an election wherein it was determined that traffic in light wines and beer should be excluded from the county, must allow protestants a hearing on issue whether the petition for the election contained the required 20 per cent of the qualified electors. Costas v. Board of Supvrs., 198 Miss. 440, 22 So. 2d 229 (1945).

Fact that county is divided into two judicial districts does not require that 20 per cent of the qualified voters in each judicial district petition for election hereunder, but the requirement for the holding of such election is satisfied if 20 per cent of the qualified voters of the whole county, disregarding the districts, petition for the election. Sparks v. Reddoch, 196 Miss. 609, 18 So. 2d 450 (1944).

The statute authorizing counties to prohibit sale of beer and wine by local election is not unconstitutional as unlawful delegation of legislative power; and the calling of a local election to prohibit sale of beer and wine within county was not unconstitutional as taking previous licensees' property without due process. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938).

Statute providing for election on question whether beer and light wines should continue to be sold in county does not require that such election should be held on general election date, but contemplates special election of which electors of county must be given notice. Simpson County v. Burkett, 178 Miss. 44, 172 So. 329 (1937).

2. Signatures to petition.

The statute authorizing local option election on petition of twenty per cent of qualified voters does not prohibit voter from authorizing some other person to sign petition for him rather than signing personally. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938).

3. Findings of jurisdictional facts.

Hearing before county board of supervisors to determine whether petition to exclude beer and wine from county contains requisite signatures is a judicial proceeding, and members of board of supervisors, convened as court to hear written protest denying fact that twenty percent of qualified electors of county signed petition for election, were correct in their refusal to permit themselves to be cross-examined as witnesses on issues before them, and such refusal is not denial of full and complete hearing of protests where protestants were given right to introduce other evidence, which they declined to do. Duggan v. Board of Supvrs., 207 Miss. 854, 43 So. 2d 566 (1949).

It is not essential to jurisdiction of board of supervisors to order election under this section that it affirmatively adjudicate fact to be that no such election has been held within past five years and absence of such adjudication in proceedings does not make same void. Caruthers v. Panola County, 205 Miss. 403, 38 So. 2d 902 (1949).

It is not necessary that the board of supervisors find and recite as a jurisdictional fact that no election has been had within five years prior to the making of its order. Henry v. Board of Supvrs., 203 Miss. 780, 34 So. 2d 232 (1948), error overruled, 203 Miss. 789, 35 So. 2d 317 (1948).

The hearing before the board of supervisors to determine whether a petition filed under this statute contains the names of a sufficient number of qualified electors is a judicial proceeding from which interested parties and their attorneys may not be excluded and from whom relevant facts may not be withheld. Miles v. Board of Supvrs., 33 So. 2d 810 (Miss. 1948).

The board of supervisors must adjudicate the facts requisite to an order calling an election to legalize the sale of light wine and beer before the order is entered; and, while it is better practice for the board of supervisors in its order expressly to find and adjudicate the total number of qualified electors in the county and on the petition, it is sufficient if the order recites that the petition is that of not less than twenty percentum of the qualified voters of the county; and failure of the board before entering the order to determine the number of qualified voters in the county and the percentage on the petition as of the time that the matter was considered was not cured by the appointment of a man at that time to ascertain such facts and his reporting back after the election had been held. Miles v. Board of Supvrs., 200 Miss. 214, 26 So. 2d 541 (1946).

Finding of trial court that order of board of supervisors ordering referendum election upon issue whether traffic in beer and light wines should be excluded from county was properly and timely signed by the president of the board, was not manifestly wrong or without sufficient basis so as to require reversal. Miller v. Board of Supvrs., 198 Miss. 320, 22 So. 2d 372 (1945).

Adjudication of board of supervisors as to sufficiency of signatures to petition for an election to determine whether traffic in light wines and beers should be excluded from the county, was interlocutory, and entire cause, including that issue, must on pertinent and competent protest be adjudicated by the board upon trial before the final judgment could be entered in the case. Costas v. Board of Supvrs., 198 Miss. 440, 22 So. 2d 229 (1945).

Where the order of the board of supervisors found as a fact that a certain number of qualified electors had duly signed the petition for the holding of an election hereunder, being more than 20 per cent of the qualified electors of the county, there was no merit to the contention that such order was insufficient to adjudge that fact in that reference was made therein to a certificate of the circuit court of the circuit clerk as to the number of qualified electors in the county, instead of the board making the finding as a result of its own investigation; and upon attack upon the validity of the election on certiorari, the circuit court did not err in refusing to hear evidence outside the record to support appellants' contention that the board of supervisors failed to adjudicate the required fact that the petition for election was signed by the requisite percentage of qualified electors. Sides v. Board of Supvrs., 190 Miss. 420, 200 So. 595 (1941).

Where the order of the board of supervisors of a county, in passing upon the sufficiency of a petition for local option in the county signed by 810 qualified voters thereof in regard to the requisite jurisdictional facts, recited that the total registration for the county at the time the petition was presented did not exceed 2,600 voters, and therefore more than 20 per cent of the duly qualified voters of the county signed such petition, and a special election was ordered in which a majority voted for local option, and thereafter an order prohibiting the sale of beer and light wine was entered, which recited that due, legal and proper notice was given of such election as required by Mississippi Code 1930, §§ 310 and 6,265, and it was found that legal and proper notice was in fact given and a proof of publication was made and filed, such election was legal. Day v. Board of Supvrs., 184 Miss. 611, 185 So. 251 (1939).

Jurisdictional facts supporting a judgment calling local option election must appear in the record, but language in which they are recited need not be such as a skillful lawyer would use. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938).

County board of supervisors is without power to call election on question of discontinuing sale of beer and light wines in county in response to petition therefor until adjudication that petition contains sufficient number of signatures of qualified electors has been made and has been actually entered on minutes of board. Simpson County v. Burkett, 178 Miss. 44, 172 So. 329 (1937).

4. —Conclusiveness.

An order by the board of supervisors adjudicating the sufficiency of the petition and ordering an election, and a final judgment of the board excluding wine and beer from a county, pursuant to such election, is without authority of law and a denial of due process where the hearing on the petition is a star-chamber proceeding. Miles v. Board of Supvrs., 33 So. 2d 810 (Miss. 1948).

Fact that some citizens not in privity with present protestants had appeared before board of supervisors and contested sufficiency of petition for an election to determine whether traffic in light wines and beer should be excluded from county, on ground that petition did not contain the required 20 per cent of the qualified electors when the board adjudicated the petition to be sufficient, did not estop other taxpayers from subsequently contesting the petition on the same grounds, where the present protestants had no notice of the hearing on the original petition and did not participate therein, since the hearing on the original petition did not close the question as to the sufficiency of the petition. Costas v. Board of Supvrs., 198 Miss. 440, 22 So. 2d 229 (1945).

Where the order of the board of supervisors recited the jurisdictional facts, and showed compliance with the requirements of law leading to the issuance of an order prohibiting the sale of light wine and beer, their judgment became conclusive and could not be attacked by new proof on certiorari in the circuit court, since that court is confined to the examination of the proceedings appearing of record in the bill of exceptions, and cannot look to matters extraneous and foreign to the bill of exceptions; and accordingly evidence presented on certiorari that no proof of publication with respect to notice of the local option election was on file at the time the board of supervisors adjudicated the validity of the election, and the proceedings leading thereto, to prohibit the sale of light wines and beer in the county, could not affect the board's adjudication of validity. Hall v. Franklin County, 184 Miss. 77, 185 So. 591 (1939).

Where board of supervisors finds a jurisdictional fact, in support of judgment calling local option election, judgment is entitled to the same force and effect with respect to such fact as judgment of a court of general jurisdiction. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938).

A fact finding of board of supervisors, in order calling local option election, that petition for election was signed by twenty per cent or more of qualified voters, was conclusive on appeal with respect to whether petition was signed by voters personally. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938).

Where correctness of petition for local option election was not challenged at meeting of board of supervisors, and no appeal or certiorari was taken from board's order for election based on petition, board's fact finding in such order, that signatures on petition represented twenty per cent or more of the qualified electors as required by statute, was conclusive on appeal. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938).

5. Notice of election.

In the absence of a notice provision in § 67-3-7 with respect to local option elections, the general statute requiring 30 days' notice of election was applicable. Howard v. Crider, 341 So. 2d 477 (Miss. 1977).

When the law requires that 30 days notice of election be given by newspaper publication, the first publication of the notice must be made at least 30 days prior to the election and the publication must be continued in each successive weekly issue of the newspaper until the date of the election, and not more than 7 days should be allowed to intervene between the last publication of the notice and the election. Neal v. Board of Supvrs., 217 Miss. 102, 63 So. 2d 540 (1953).

Notice of local option election under this section on question of outlawing wine and beer, given for thirty days in newspaper published and circulated in county, is correct and proper notice of election, as notice required to be given of such election is governed by Code 1942, § 3018, and not by Code 1942, § 3294. Duggan v. Board of Supvrs., 207 Miss. 854, 43 So. 2d 566 (1949).

A published notice of election on local option was sufficient where it recited the fact and date of the order of the board of supervisors, the fact and date that an election would be held pursuant to the specified statutory enactments, and the purpose of the election. Henry v. Board of Supvrs., 203 Miss. 780, 34 So. 2d 232 (1948), error overruled, 203 Miss. 789, 35 So. 2d 317 (1948).

The contemplated method of giving notice of election on local option is by publication in a newspaper. Henry v. Board of Supvrs., 203 Miss. 780, 34 So. 2d 232 (1948), error overruled, 203 Miss. 789, 35 So. 2d 317 (1948).

This section makes no provision for notice to anybody interested except notice to the electors by the board of election commissioners concerning the holding of the election and such notice thereafter brings into the situation everybody affected thereby, and those failing thereafter before final judgment to seek to contest any phase of the issues, would be estopped. Costas v. Board of Supvrs., 198 Miss. 440, 22 So. 2d 229 (1945).

Objection that notice for election hereunder, for the exercise of local option in the county, was signed by the president and clerk of the board of supervisors instead of by the election commissioners of the county, was without merit where the notice given was sufficient in form and substance, and pursuant thereto the election commissioners proceeded to hold the election and certify the result thereof as required by law. Sides v. Board of Supvrs., 190 Miss. 420, 200 So. 595 (1941).

Six weeks' publication of notice of local option election, effected by order of clerk of board of supervisors rather than of election commissioners, without board's issuing commission to election commissioners directing the commissioners to hold election, was proper irrespective of applicability of general statute authorizing board of supervisors to call election, where election commissioners actually held the election in conformity with law. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938).

The manner of publication of notice for local option election is controlled by general statute requiring thirty days' notice of election on any matter affecting the entire county. Martin v. Board of Supvrs., 181 Miss. 363, 178 So. 315 (1938).

Thirty days' notice is essential to the holding of a valid election on the question whether beer and light wines should continue to be sold in county. Simpson County v. Burkett, 178 Miss. 44, 172 So. 329 (1937).

6. Matters submitted.

A proposition submitted on the ballot in a local option election held under Chapter 252, Laws of 1956, in the exact terms of subsection (a) thereof, to the effect that the proposition was to exclude from a named county the transportation, storage, sale, distribution, the receipt and/or manufacture of wine and beer of alcoholic content of not more than four percent by weight, but which did not state that, by virtue of subsection (b) thereof, the possession of such beverages would also be prohibited, submitted the correct proposition to the voters. Stennis v. Board of Supvrs., 232 Miss. 212, 98 So. 2d 636 (1957).

The fact that the order of the board of supervisors and the ballots used in the election to determine whether transportation, storage, sale, etc., of wine and beer should be excluded from the county, submitted to the voters the right also to exclude the possession of wine and beer in the county did not vitiate the election. Sparks v. Reddoch, 196 Miss. 609, 18 So. 2d 450 (1944).

Fact that order of board and ballots used in election submitted to voters the right also to exclude possession of wine and beer did not vitiate the election. Moffett v. Board of Supvrs., 181 Miss. 419, 179 So. 352 (1938).

7. Ballots.

Language in submission at election of question whether traffic in light wines or beer "shall be excluded" from the county is not inconsistent with the statutory language so as to invalidate the election. Costas v. Board of Supvrs., 196 Miss. 104, 15 So. 2d 365, 154 A.L.R. 863 (1943), suggestion of error sustained in part, 196 Miss. 104, 16 So. 2d 378 (1943).

The use of the device "and/or" in ballots used in election to determine exclusion of light wines and beer in the county did not render the election void as creating an ambiguity as to the issue submitted to the voters. Costas v. Board of Supvrs., 196 Miss. 104, 15 So. 2d 365, 154 A.L.R. 863 (1943), suggestion of error sustained in part, 196 Miss. 104, 16 So. 2d 378 (1943).

The fact that some of the ballots used in several of the precincts in an election for the exercise of local option in the county, contained an incorrect description of the precincts, which error was corrected by the election manager, did not make the election invalid. Sides v. Board of Supvrs., 190 Miss. 420, 200 So. 595 (1941).

On certiorari to invalidate an election to exclude wine and beer on the ground that some of the ballots used in some of the voting precincts were labeled with the designation of some other precinct, which error had been corrected by the election managers, the election was valid, since if the supreme court did not look to the evidence upon which a board of supervisors made its adjudication as to validity of the election, the result would be the same for the reason that without this report of the election commissioners and the approval thereof by the board of supervisors, there would not be anything to disclose the fact that the ballots were not properly labeled when sent to the respective precincts for use. Sides v. Board of Supvrs., 190 Miss. 420, 200 So. 595 (1941).

8. Qualifications of electors.

In determining the sufficiency of a petition to exclude wine and beer from a county as regards the necessary number of signatures of qualified voters, the registration books are not conclusive evidence that the persons registered are qualified electors. Miles v. Board of Supvrs., 33 So. 2d 810 (Miss. 1948).

The number of qualified voters in the county and the percentage on the petition must be determined as of the time that the matter is considered by the board, not as of the time that the petition is filed. Miles v. Board of Supvrs., 200 Miss. 214, 26 So. 2d 541 (1946).

Qualifications of electors were properly determined as of hour petition considered and order passed, although not entered on minutes until two days later. Moffett v.

Board of Supvrs., 181 Miss. 419, 179 So. 352 (1938).

9. Judicial review.

Order of board of supervisors excluding traffic in light wines and beer pursuant to election had is a final order from which an appeal lies. Moreover, final order of board of supervisors from which appeal will lie in the exclusion of light wines and beer in the county is the order showing affirmatively an adjudication as to the sufficiency of the notice of the election and publication according to law, that the notice contained a statement of the proposition to be voted on at the election and that the report of the election commissioners disclosed that a majority of those voting in the election had voted in favor of exclusion; and order of board of supervisors, adjudicating sufficiency of petitions for election and providing for election to exclude traffic in light wines and beer in county, was an interlocutory order and not a final order, requiring appeal therefrom within ten days in order to question sufficiency of petitions. Costas v. Board of Supvrs., 196 Miss. 104, 15 So. 2d 365, 154 A.L.R. 863 (1943), suggestion of error sustained in part, 196 Miss. 104, 16 So. 2d 378 (1943).

Allowance of appeal with supersedeas in beer election case does not operate as a judicial license to continue operations in spite of adverse election and the consequent judgment of the tribunals of original jurisdiction. Early v. Board of Supvrs., 182 Miss. 636, 181 So. 132 (1938).

If judgment in case in which validity of local option election is questioned is affirmed, all offenses against law during time appeal was pending are punishable as if no appeal had been taken regardless of supersedeas. Early v. Board of Supvrs., 182 Miss. 636, 181 So. 132 (1938).

Refusal to allow amendment of pleadings, whereby it was sought to have registration books and poll books, and other records, brought up to ascertain percentage of qualified electors signing petition for election, was not error. Hamilton v. Long, 181 Miss. 627, 180 So. 615 (1938).

Court properly affirmed supervisor's order, in absence of error appearing on face of record. Hamilton v. Long, 181 Miss. 627, 180 So. 615 (1938).

In certiorari proceedings to review order of supervisors calling election, facts regarding election and the report thereof by election commissioners, occurring subsequent to issuance of writ, were not part of record proper on hearing in circuit court, but consideration thereof did not harm party seeking writ where no error appeared in entire proceedings. Hamilton v. Long, 181 Miss. 627, 180 So. 615 (1938).

Writ to review order of supervisors, held improvidently issued where exhibits recited all necessary jurisdictional facts entitling board to act. Hamilton v. Long, 181 Miss. 627, 180 So. 615 (1938).

In petition for certiorari to review order of supervisors, it is only where ground for reversal appears from the record that circuit court can grant hearing on merits. Hamilton v. Long, 181 Miss. 627, 180 So. 615 (1938).

Where affidavit accompanying petition for election stated petition contained more than twenty per cent of electors, but did not refer to number of qualified electors in county, but order of supervisors determining sufficiency of petition did state number of electors, supreme court was required to assume supervisors made independent investigation to determine if more than twenty per cent of qualified electors had signed petition. Moffett v. Board of Supvrs., 181 Miss. 419, 179 So. 352 (1938).

On appeal from quashing of certiorari to review proceedings of board of county commissioners in calling election to determine whether sales of beer and light wines should be abolished, supreme court would not determine whether statute authorizing election was unconstitutional delegation of legislative authority where question was raised for first time on appeal. Adams v. Board of Supvrs., 177 Miss. 403, 170 So. 684 (1936).

Action of county board of supervisors, in ordering election to determine whether sales of beer and light wines should be abolished, is appealable by certiorari, as against contention that action was not judicial but merely ministerial. Mohundro v. Board of Supvrs., 174 Miss. 512, 165 So. 124 (1936).

10. Frequency of elections.

Statutory provision prohibiting holding of election, on question whether beer and light wines should be continued to be sold in county, more often than once in a designated period is inapplicable if election is for any reason invalid. Simpson County v. Burkett, 178 Miss. 44, 172 So. 329 (1937).

11. Miscellaneous.

Affidavit charging that defendant did unlawfully sell beer contrary to statute was insufficient because of failure to allege that as result of election the sale of beer was not permitted in the county of alleged sale since such election was an essential element of the offense. May v. State, 209 Miss. 579, 47 So. 2d 887 (1950).

Party obtaining void writ of prohibition could not complain of order vacating writ on ground judge did not have authority in vacation. Hamilton v. Long, 181 Miss. 627, 180 So. 615 (1938).

Where no timely appeal or certiorari was taken to review judgment of board of supervisors that election to exclude sale of beer and wine was legal that electors had voted to exclude, and prohibiting sale thereof, validity of judgment could not be questioned in proceeding to prohibit prosecution for selling beer and wine. Blount v. Kerley, 180 Miss. 863, 178 So. 591 (1938).

Holders of license for sale of beer and light wines were not entitled to challenge constitutionality of statute authorizing election to determine whether sales of beer and light wine should be abolished on ground that failure of statute to provide for notice constituted denial of due process, in absence of showing that if statute had provided for notice result would have been different as to holders of license. Adams v. Board of Supvrs., 177 Miss. 403, 170 So. 684 (1936).

ATTORNEY GENERAL OPINIONS

In dry county, where city is wet, person may not have beer in his or her possession outside of city limit. Gilliland, Sept. 16, 1992, A.G. Op. #92-0681.

A county board of supervisors is without authority to call an election on discontinuing the sale of beer and light wines in response to a petition therefor until an adjudication that the petition contains a sufficient number of signatures of qualified electors has been made and entered on the minutes of the board. Rogers, Sept. 10, A.G. Op. 04-0476.

No statute can be found prohibiting use of a single petition for both a referendum on alcoholic beverages under § 67-1-11 and for beer and light wine under this section. Lamar, Sept. 13, 2004, A.G. Op. 04-0478.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 55 et seq.

10 Am. Jur. Legal Forms 2d, Intoxicating Liquors § 151:30 (petition for local option election).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 11-17 (petitions or applications in local option elections).

CJS. 48 C.J.S., Intoxicating Liquors §§ 80 et seq.

§ 67-3-9. Local option elections in certain municipalities.

Any city in this state, having a population of not less than two thousand five hundred (2,500) according to the latest federal census, at an election held for the purpose, under the election laws applicable to such city, may either prohibit or permit, except as otherwise provided under Section 67-9-1, the sale and the receipt, storage and transportation for the purpose of sale of beer and light wine. An election to determine whether such sale shall be permitted in cities wherein its sale is prohibited by law shall be ordered by the city council or mayor and board of aldermen or other governing body of such city for such city only, upon the presentation of a petition for such city to such governing board containing the names of twenty percent (20%) of the duly qualified voters of such city asking for such election. In like manner, an election to determine whether such sale shall be prohibited in cities wherein its sale is permitted by law shall be ordered by the city council or mayor and board of aldermen or other governing board of such city for such city only, upon the presentation of a petition to such governing board containing the names of twenty percent (20%) of the duly qualified voters of such city asking for such election. No election on either question shall be held by any one (1) city more often than once in five (5) years.

Thirty (30) days' notice shall be given to the qualified electors of such city in the manner prescribed by law upon the question of either permitting or prohibiting such sale, and the notice shall contain a statement of the question to be voted on at the election. The tickets to be used in the election shall have the following words printed thereon: "For the legal sale of light wine of an alcoholic content of not more than five percent (5%) by weight and beer of an alcoholic content of not more than eight percent (8%) by weight "; and the words "Against the legal sale of light wine of an alcoholic content of not more than five percent (5%) by weight and beer of an alcoholic content of not more than eight percent (8%) by weight," next below. In making up his ticket the voter shall make a cross (X) opposite the words of his choice.

If in the election a majority of the qualified electors voting in the election shall vote "For the legal sale of light wine of an alcoholic content of not more than five percent (5%) by weight and beer of an alcoholic content of not more than eight percent (8%) by weight," then the city council or mayor and board of aldermen or other governing body shall pass the necessary order permitting the legal sale of such light wine and beer in such city. If in the election a majority of the qualified electors voting in the election shall vote "Against the legal sale of light wine of an alcoholic content of not more than five percent (5%) by weight and beer of an alcoholic content of not more than eight percent (8%) by weight," then the city council or mayor and board of aldermen or other governing body shall pass the necessary order prohibiting the sale of such light wine and beer in such city.

All laws or parts of laws in conflict with this section are hereby repealed to the extent of such conflict only, this section being cumulative and supplementary.

SOURCES: Codes, 1942, § 10208.5; Laws, 1950, ch. 501, §§ 1-3; Laws, 1996, ch. 417, § 10; Laws, 1998, ch. 306, § 6; Laws, 2012, ch. 323, § 6, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment in the first paragraph substituted "sale of beer and light wine" for "sale of beer of an alcoholic content of not more than five percent (5%) by weight" in the first sentence, and "more often" for "oftener" in the last sentence; rewrote the second and third paragraphs and made minor stylistic changes throughout.

Cross References — Elections under local option alcohol beverage control law, see §§ 67-1-11 through 67-1-15.

JUDICIAL DECISIONS

1. In general.

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. Martin v. State, 501 So. 2d 1124 (Miss. 1987).

Where the petition filed on January 15, 1985 was 126 registered voters short of the statutorily required 20 percent necessary to call a beer sales referendum, whereupon the board of alderman requested Attorney General opinion for guidance and, upon release of Attorney General's opinion, petitioners gathered additional signatures, board properly accepted 126 validated names submitted on March 26, 1985 to supplement those on the petition as first filed, adjudged that the petition met the 20 percent requirement, and called the election. City of Clinton v. Smith, 493 So. 2d 331 (Miss. 1986).

Where no express deadline for the filing of petitions is fixed by statutes or order of the governing authority, additional signatures of registered voters may be added after the original filings if added within a reasonable time following the original filings, and provided further, that the governing authority be required to adjudge as of the date it determines to call the election that the number of validated signatures as of that day is adequate, and, where, as in this case, the delay was some 2 months and 10 days, several weeks of which were consumed in effort to obtain an Attorney General opinion, none of the 126 signatures submitted on March 25, 1985, and validated by the city clerk, was disqualified from consideration because of tardy filing. City of Clinton v. Smith, 493 So. 2d 331 (Miss. 1986).

Each signature of a registered voter, before that signature may be validated and counted toward the number of signatures required by statute, must appear upon a page which contains language expressing in an intelligible manner the desire of the signing party that a particular referendum election be called, that is, language sufficient that one reading it before signing would not likely be mislead as to the import of his or her signature. City of Clinton v. Smith, 493 So. 2d 331 (Miss. 1986).

Forty-five validated signatures on 6 petition pages containing no language advising signatories of the reason for affixing their signatures thereon could not be counted toward the 20 percent requirement to call a beer sales referendum election. City of Clinton v. Smith, 493 So. 2d 331 (Miss. 1986).

A petition asking the board of aldermen to call an election to determine whether or not beer could be lawfully sold in the city, which was regular and sufficient on its face, and contained an attorney's affidavit that the signatures thereon were genuine, as well as the city clerk's affidavit that the names of more than 20 per cent of the city's qualified electors were on the petition, was sufficient to make a prima facie case for petitioners. Lee County Drys v. Anderson, 231 Miss. 222, 95 So. 2d 224 (1957).

It was the duty of the mayor and board of aldermen to canvass the names on petition asking that an election be called to determine whether or not beer could be lawfully sold in the city, in order to determine whether or not such petition contained the required number of qualified voters, and to adjudicate this fact. Lee County Drys v. Anderson, 231 Miss. 222, 95 So. 2d 224 (1957).

Where, upon appeal, the circuit judge correctly reversed the action of the mayor and board of supervisors in dismissing a petition asking that an election be held to determine whether or not beer could be lawfully sold in the city, it was error to fail to enter a judgment directing the mayor and the board of aldermen to call an election in accordance with this section. Lee County Drys v. Anderson, 231 Miss. 222, 95 So. 2d 224 (1957).

Although the county in which the city was located had voted out beer under Code 1942, § 10208, in 1939, this would not prevent the city from holding an election under this section to determine whether or not beer could be sold therein. Lee County Drys v. Anderson, 231 Miss. 222, 95 So. 2d 224 (1957).

ATTORNEY GENERAL OPINIONS

1988 census estimate is not viewed as official update or amendment to latest census; population figures of 1980 census and not those of 1988 estimate constitute "latest federal census" as contemplated by statute. Shepard, March 15, 1990, A.G. Op. #90-0161.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 55 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 90, 92.

§ 67-3-11. Homemade wine.

Every person shall have the right to make homemade wine for domestic or household uses only, free of all restraint by this chapter or otherwise, and no such election as provided for in Sections 67-3-7, 67-3-9 and 67-3-13, shall deprive any person of the right to make homemade wine for domestic or household uses only.

SOURCES: Codes, 1942, §§ 10209, 10227; Laws, 1934, ch. 171.

Cross References — Rule making it unlawful to manufacture intoxicating liquors, see § 97-31-21.

JUDICIAL DECISIONS

1. In general.

In charging offense of unlawful possession of wine, it is not necessary to negative exception of homemade wine. Forbert v. State, 179 Miss. 66, 174 So. 248 (1937).

§ 67-3-13. Prohibition against possession of light wine and beer in dry counties; penalty; exceptions.

(1) Except as otherwise provided herein and as authorized under this section and Section 67-9-1, in any county which has at any time since February 26, 1934, elected, or which may hereafter elect, to prohibit the transportation, storage, sale, distribution, receipt and/or manufacture of wine and beer of an alcoholic content of not more than four percent (4%) by weight in such county, it is hereby declared to be unlawful to possess such beverages therein. In any county which, after July 1, 1998, elects to prohibit the transportation, storage, sale, distribution, receipt and/or manufacture of wine and beer of an alcoholic content of not more than five percent (5%) by weight in such county, it is hereby declared to be unlawful to possess such wine or beer therein. In any county which, after July 1, 2012, elects to prohibit the transportation, storage, sale, distribution, receipt and/or manufacture of wine of an alcoholic content of not more than five percent (5%) by weight in such county and beer of an alcoholic

content of not more than eight percent (8%) by weight, it is hereby declared to be unlawful to possess such wine or beer therein. Any person found possessing any beer or wine of any quantity whatsoever in such county shall, on conviction, be imprisoned not more than ninety (90) days or fined not more than Five Hundred Dollars ($500.00), or be both so fined and imprisoned.

(2) Notwithstanding the provisions of subsection (1) of this section, in any county or municipality in which the transportation, storage, sale, distribution, receipt and/or manufacture of light wine and beer is prohibited, it shall not be unlawful for a permitted wholesaler or distributor to possess light wine and beer when such light wine and beer is held therein solely for the purpose of storage and for distribution to other counties and municipalities in which possession of such beverages is lawful.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, in any county in which transportation, storage, sale, distribution, receipt and/or manufacture of light wine and beer is prohibited, it shall not be unlawful:

(a) To receive, store, possess or consume light wine or beer at a resort area as defined in Section 67-1-5;

(b) To distribute and transport light wine or beer to a resort area as defined in Section 67-1-5;

(c) To transport beer of an alcoholic content of more than eight percent (8%) by weight if it is being transported to another state for legal sale in that state.

SOURCES: Codes, 1942, § 10208; Laws, 1934, ch. 171; Laws, 1942, ch. 224; Laws, 1956, ch. 252; Laws, 1958, ch. 279; Laws, 1987, ch. 349; Laws, 1996, ch. 417, § 11; Laws, 1998, ch. 306, § 7; Laws, 2004, ch. 397, § 6; Laws, 2012, ch. 323, § 7; Laws, 2012, ch. 501, § 4, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 4 of Chapter 501, Laws of 2012, effective July 1, 2012 (approved April 30, 2012), amended this section. Section 7 of Chapter 323, Laws of 2012, effective July 1, 2012 (approved April 5, 2012), also amended this section. As set out above, this section reflects the language of Section 4 of Chapter 501, Laws of 2012, which contains language that specifically provides that it supersedes § 67-3-13 as amended by Laws of 2012, ch. 323.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error near the end of the second and third sentences of (1) by inserting the words “wine or” preceding “beer therein.” The Joint Committee ratified the correction at its August 16, 2012, meeting.

Amendment Notes — The first 2012 amendment (ch. 323), added the next-to-last sentence in (1).

The second 2012 amendment (ch. 501), added the next-to-last sentence in (1); and added (3)(c).

Cross References — Seizure and sale of illegal beverages under local option alcohol beverage control law, see § 67-1-17.

As to possession of alcoholic beverages, light wine and beer by person holding alcohol processing permit, see § 67-9-1.

Rule making it unlawful to manufacture intoxicating liquors, see § 97-31-21.

Rule making it unlawful to possess or sell intoxicating liquors, see § 97-31-27.

JUDICIAL DECISIONS

1. Validity.
2. Construction.
3. Effect.

1. Validity.

Section 67-3-13 did not deny a defendant, who was convicted of possession of beer in a "dry" part of the county while traveling home after having legally purchased the beer in a "wet" city, equal protection under the laws and constitution of the State of Mississippi and the Constitution of the United States, nor was there any invasion of the defendant's constitutional right of privacy. Dantzler v. State, 542 So. 2d 906 (Miss. 1989).

Chapter 279, Laws of 1958, is constitutional and valid, and states an enforceable and definite offense. Kelly v. State, 237 Miss. 112, 113 So. 2d 540 (1959).

2. Construction.

Chapter 252, Laws of 1956, neither expressly nor by implication repealed Code 1942, § 10208.5. Lee County Drys v. Anderson, 231 Miss. 222, 95 So. 2d 224 (1957).

It is not unlawful to possess beer having an alcoholic content of not more than 4 per cent by weight in a county where beer has been excluded by an election and neither is it unlawful to transport beer into such county for purposes of personal use or consumption. King v. Monaghan, 227 Miss. 251, 85 So. 2d 911 (1956).

3. Effect.

Where police found a bottle of vodka and four cans of beer in defendant's vehicle, he was arrested and charged with the offenses of possession of whiskey and possession of beer in a dry county; the failure of the police justice affidavit to cite to the Mississippi statute did not render the affidavit invalid, and the defendant was adequately notified of the nature and cause of the accusations against him. Loveless v. City of Booneville, 972 So. 2d 723 (Miss. Ct. App. 2007), writ of certiorari dismissed by 973 So. 2d 244, 2008 Miss. LEXIS 2 (Miss. 2008).

Where enforcement agents of the Alcoholic Beverage Control Division, in the course of a lawful search for intoxicating liquor, discovered beer which was contraband in that county, it was lawful under the circumstances for the officers to seize the beer, and their testimony with respect to it was properly admitted in a prosecution for the illegal possession of beer. Gann v. State, 234 So. 2d 627 (Miss. 1970).

Where the qualified electors of a county had rejected the proposition that beer had not more than four percent alcohol by weight be legalized, possession of beer in the county was illegal and continued to be so after the election whether its alcoholic content was more or less than four percent, and proof that an accused's beer contained more than four percent of alcohol by weight was not necessary in order to convict the accused of the illegal possession of the beer. Gann v. State, 234 So. 2d 627 (Miss. 1970).

A charge of unlawfully possessing beer must allege that it was in violation of this statute. Brown v. State, 241 Miss. 838, 133 So. 2d 529 (1961).

The local option statutes, Chapter 171, Laws of 1934, and chapter 279, Laws of 1958, are so closely related that a valid affidavit charging an offense under subsection (b) of the 1958 Act must charge, among other averments, that the defendant had possession of alcoholic beverages in violation of the provisions of Chapter 279, Laws of 1958. Kelly v. State, 237 Miss. 112, 113 So. 2d 540 (1959).

A charge that one had in his possession beer when the same was prohibited in the county as the result of an election to prohibit its transportation, storage, sale, distribution or manufacture, contrary to that form of the statute in such case made and provided, fails to state an offense. Kelly v. State, 237 Miss. 112, 113 So. 2d 540 (1959).

In prosecution for unlawful distribution of beer in a county where such distribution has been outlawed by the vote of the people, this distribution is violation of this section regardless of the fact that the alcoholic content may be 4 per cent or less and it is unnecessary for the charge or the proof to show whether the alcoholic content was 4 per cent or more or less than that amount. Walton v. State, 219 Miss. 72, 68 So. 2d 87 (1953).

Under a statute allowing the county to determine that it shall be unlawful to transport beer of alcoholic content of not more than 4 per cent, an indictment which charged violation of the statute but did not set out each step by which county effected its "determination" but stated what the county determined was sufficient. Hoyle v. State, 216 Miss. 330, 62 So. 2d 380 (1953).

ATTORNEY GENERAL OPINIONS

A beer distributorship may be located in a dry jurisdiction, provided that the beer or light wine is held solely for the purpose of storage and distribution to wet counties and municipalities. Johnson, III, Nov. 30, 2001, A.G. Op. #01-0709.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 79 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 311 et seq., 380.

§ 67-3-15. Permit and/or license required.

Any person who shall brew or manufacture or sell any beer or light wine without first having secured a permit and/or license from the commissioner authorizing the brewing or manufacture or sale of such liquor, shall be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisonment in the county jail for not more than one (1) year, or both, in the discretion of the court. Any person so convicted may not apply for any permit or license issued by the commissioner until five (5) years have elapsed from the date of such conviction.

SOURCES: Codes, 1942, § 10212; Laws, 1934, ch. 171; Laws, 1997, ch. 499, § 10; Laws, 2000, ch. 435, § 8, eff from and after July 1, 2000.

Cross References — Labelling of light wines and beer with respect to alcoholic content, see § 27-71-509.

Issuance, revocation, etc., of permits under local option alcohol beverage control law, see §§ 67-1-51 to 67-1-71.

Permits for sale of intoxicating liquors, see §§ 67-1-51 et seq.

Prohibition on manufacturers of light wine or beer acting as wholesalers or distributors, see § 67-3-46.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

In a suit for the breach of a commercial lease, the tenant was not prohibited from claiming lost profits resulting from the club's sale of beer and he did not have a license to sell beer where any failure in obtaining a liquor license was not a contributing cause of the damages that he tenant sought. Evans v. Clemons, 872 So. 2d 23 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032 (Miss. 2004).

Defendant who had not obtained license to sell beer and wine was not entitled to writ prohibiting prosecution before justice of peace on theory election to exclude sale was invalid. Blount v. Kerley, 180 Miss. 863, 178 So. 591 (1938).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 87 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 90 et seq.

§ 67-3-17. Application for permit; oath.

(1) Any person desiring to engage in any business taxable under Sections 27-71-303 through 27-71-317, Mississippi Code of 1972, either as a retailer, or as a wholesaler or distributor, or as a manufacturer, of light wines or beer, shall file with the commissioner an application for a permit allowing him to engage in such business. The application for a permit shall contain a statement showing the name of the business, and if a partnership, firm, association or limited liability company, the name of each partner or member, and if a corporation the names of two (2) principal officers, the post office address, and the nature of business in which engaged. In case any business is conducted at two (2) or more separate places, a separate permit for each place of business shall be required. The commissioner shall prescribe the form of the application and designate who is required to sign the application. The application shall be signed under penalty of perjury.

(2) The application shall include a statement that the applicant will not, except as otherwise authorized in this chapter, allow any alcoholic beverages as defined in Section 67-1-5, any beer having an alcoholic content of more than eight percent (8%) by weight or any wine, having an alcoholic content of more than five percent (5%) by weight, to be kept, stored or secreted in or on the premises described in such permit or license, and that the applicant will not otherwise violate any law of this state, or knowingly allow any other person to violate any such law, while in or on such premises.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 10238; Laws, 1934, ch. 127; Laws, 1997, ch. 588, § 22; Laws, 1998, ch. 306, § 8; Laws, 2012, ch. 323, § 8; Laws, 2012, ch. 501, § 5; Laws, 2012, ch. 566, § 3, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 8 of Chapter 323, Laws of 2012, effective July 1, 2012 (approved April 5, 2012), Section 5 of Chapter 501, Laws of 2012, effective July 1, 2012 (approved April 30, 2012) and Section 3 of Chapter 566, Laws of 2012, effective July 1, 2012 (approved May 23, 2012), amended this section. As set out above, this section reflects the language of all three amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Editor's Note — Laws, 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional".

Laws of 2012, ch. 566, § 10 provide:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage, and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Amendment Notes — The first 2012 amendment (ch. 323), substituted "alcoholic beverages as defined in Section 67-1-5, any beer having an alcoholic content of more than eight percent (8%) by weight or any" for "intoxicating liquor as defined by this chapter, including beer, wine and distilled spirits, or alcoholic, malt, or vinous liquors including beer and" in the second paragraph.

The second 2012 amendment (ch. 501), in the second paragraph, inserted "except as otherwise authorized in this chapter" and substituted "alcoholic beverages as defined in Section 67-1-5, any beer having an alcoholic content of more than eight percent (8%) by weight or any" for "intoxicating liquor as defined by this chapter, including beer, wine and distilled spirits, or alcoholic, malt, or vinous liquors including beer and."

The third 2012 amendment (ch. 566), in (1), in the second paragraph, inserted "except as otherwise authorized in this chapter" and substituted "alcoholic beverages as defined in Section 67-1-5, any beer having an alcoholic content of more than eight percent (8%) by weight or any" for "intoxicating liquor as defined by this chapter, including beer, wine and distilled spirits, or alcoholic, malt, or vinous liquors including beer and" and made minor stylistic changes.

Cross References — Applications for permits for sale of intoxicating liquors, see §§ 67-1-53 et seq.

Brewpub alcoholic content testing requirements, see § 67-3-28.

Penalty for violation, see § 67-3-69.

JUDICIAL DECISIONS

In a suit for the breach of a commercial lease, the tenant was not prohibited from claiming lost profits resulting from the club's sale of beer where he did not have a license to sell beer and any failure in obtaining a liquor license was not a contributing cause of the damages that he tenant sought. Evans v. Clemons, 872 So. 2d 23 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032 (Miss. 2004).

RESEARCH REFERENCES

ALR. Transfer of retail liquor license or permit from one location to another. 98 A.L.R.2d 1123.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 118 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 21-44 (issuance or refusal to issue licenses).

CJS. 48 C.J.S., Intoxicating Liquors §§ 149 et seq.

§ 67-3-19. Qualifications of applicant for permit as retailer.

Where application is made for a permit to engage in the business of a retailer of light wine or beer, the applicant shall show in his application that he possesses the following qualifications:

(a) Applicant must be a person at least twenty-one (21) years of age, of good moral character and a resident of the State of Mississippi.

(b) Applicant shall not have been convicted of a felony, or of pandering or of keeping or maintaining a house of prostitution, or have been convicted within two (2) years of the date of his application of any violation of the laws of this state or the laws of the United States relating to alcoholic liquor.

(c) Applicant shall not have had revoked, except for a violation of Section 67-3-52, within two (2) years next preceding his application, any license or permit issued to him pursuant to the laws of this state, or any other state, to sell alcoholic liquor of any kind.

(d) Applicant shall be the owner of the premises for which the permit is sought or the holder of an existing lease thereon.

(e) Applicant shall not be residentially domiciled with any person whose permit has been revoked for cause, except for a violation of Section 67-3-52, within two (2) years next preceding the date of the present application for a permit.

(f) The applicant has not had any license or permit to sell beer or light wine at retail revoked, within five (5) years next preceding his application, due to a violation of Section 67-3-52.

(g) Applicant shall not employ any person whose permit has been revoked when such person owned or operated the business on the premises for which a permit is sought or allow such person to have any financial interest in the business of the applicant, until such person is qualified to obtain a permit in his own name.

(h) The applicant is not indebted to the State of Mississippi for any taxes.

(i) If applicant is a partnership, all members of the partnership must be qualified to obtain a permit. Each member of the partnership must be a resident of the State of Mississippi.

(j) If applicant is a corporation, all officers and directors thereof, and any stockholder owning more than five percent (5%) of the stock of such corporation, and the person or persons who shall conduct and manage the licensed premises for the corporation shall possess all the qualifications required herein for any individual permittee. However, the requirements as to residence shall not apply to officers, directors and stockholders of such corporation.

Any misstatement or concealment of fact in an application shall be ground for denial of the application or for revocation of the permit issued thereon.

The commissioner may refuse to issue a permit to an applicant for a place that is frequented by known criminals, prostitutes, or other law violators or troublemakers who disturb the peace and quietude of the community and frequently require the assistance of peace officers to apprehend such law violators or to restore order. The burden of proof of establishing the foregoing shall rest upon the commissioner.

SOURCES: Codes, 1942, § 10238-01; Laws, 1944, ch. 133, § 1; Laws, 1968, ch. 590, § 1; Laws, 1995, ch. 366, § 1; Laws, 1998, ch. 466, § 2; Laws, 2007, ch. 462, § 2, eff from and after passage (approved Mar. 26, 2007.)

Cross References — Qualification of applicant for permit under local option alcohol beverage control law, see § 67-1-57.

Prohibition on manufacturers of light wine or beer acting as wholesalers or distributors, see § 67-3-46.

Sale of beer or light wine obtained from outside state, see § 67-3-52.

JUDICIAL DECISIONS

1. In general.

In a suit for the breach of a commercial lease, the tenant was not prohibited from claiming lost profits resulting from the club's sale of beer where he did not have a license to sell beer and any failure in obtaining a liquor license was not a contributing cause of the damages that he tenant sought. Evans v. Clemons, 872 So. 2d 23 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032 (Miss. 2004).

Where local option applies, the state proposes to maintain control as to who may sell beer, as well as when and where. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

The rejection of an application for a license to sell beer at retail may not be arbitrary or capricious. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

By the terms of this section it is meant that the applicant for a license to sell beer at retail should make apparent or clear by evidence, testimony or reasoning, or prove or demonstrate that he possesses the requisite qualifications. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

The burden of showing the necessary moral character ordinarily rests upon the applicant for a license to sell beer. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

The granting of a permit to sell beer at retail ordinarily rests in the sound discretion of the official to whom the duty is committed, and the refusal to grant such permit deprives no one of any personal property right, but merely deprives him of the privilege which it is in the discretion of the proper authorities to grant or withhold. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

While if the law specially enjoined upon the state tax commissioner the duty to issue a permit to sell beer at retail, mandamus would be a proper remedy, but since the question whether the applicant possessed the requisite qualifications had to be determined by the commissioner, when he acted, he did so in the exercise of discretion and not ministerially. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

Since the commissioner, in denying the applicant a permit to sell beer at retail, was not acting ministerially but in the exercise of discretion, the action of the trial judge in refusing to grant the writ of mandamus was affirmed. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 114 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 146-148.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-3-21. Qualification of applicant for permit as distributor.

No permit shall be granted to a distributor unless the applicant therefor shall have been a resident of the State of Mississippi for at least two years.

SOURCES: Codes, 1942, § 10222; Laws, 1934, ch. 171.

Cross References — Prohibition on manufacturers of light wine or beer acting as wholesalers or distributors, see § 67-3-46.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 103, 121 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 164, 197.

§ 67-3-22. Brewpub production limits and unlawful acts.

(1) The production limits for a brewpub shall be based upon production as determined by the State Tax Commission pursuant to Section 27-71-307, Mississippi Code of 1972, and shall be limited as follows:

(a) A stand-alone restaurant or restaurant operated by a hospitality operator with less than fifty (50) guest rooms in the aggregate shall not manufacture more than forty thousand three hundred (40,300) gallons of light wine or beer per calendar year.

(b) A restaurant operated by a hospitality operator with fifty (50) or more guest rooms in the aggregate but less than five hundred (500) guest rooms in the aggregate shall not manufacture more than sixty thousand (60,000) gallons of light wine or beer per calendar year.

(c) A restaurant operated by a hospitality operator with five hundred (500) or more guest rooms in the aggregate but less than one thousand (1,000) guest rooms in the aggregate shall not manufacture more than seventy-five thousand (75,000) gallons of light wine or beer per calendar year.

(d) A restaurant operated by a hospitality operator with one thousand (1,000) or more guest rooms in the aggregate shall not manufacture more than ninety-nine thousand (99,000) gallons of light wine or beer per calendar year.

(2) Light wine or beer produced at a brewpub shall not be sold at a price less than it cost to manufacture such light wine or beer.

(3) Light wine or beer manufactured by a brewpub shall not be sold away from the premises of such brewpub (as defined in Section 27-71-301, Mississippi Code of 1972) and shall not be packaged in any form that it may be carried away from the premises; provided, however, that the final one hundred (100) gallons of beer within a fermenting tank may be placed in kegs for sale on the premises to facilitate transition from one fermenting tank to another.

(4) A brewpub shall be required to offer for sale light wine or beer that is normally carried on the inventory of wholesalers or distributors of light wine or beer.

(5) As used in this section, the term "hospitality operator" means a business that operates guest rooms that at any one (1) time will accommodate transient guests on a daily or weekly basis in conjunction with a brewpub at one (1) location or facility.

SOURCES: Laws, 1998, ch. 308, § 14, eff July 1, 1998, and shall stand repealed from and after July 1, 2002; Laws, 2002, ch. 305, § 1, eff from and after passage (approved Mar. 7, 2002.)

§ 67-3-23. Issuance, display, and transfer of permits.

Upon receipt of an application for a permit to engage in any business taxable under the provisions of Sections 27-71-303 through 27-71-317, Mississippi Code of 1972, and the oath required by Section 67-3-17, the commissioner shall issue to such applicant, without cost, a permit to engage in such business upon condition that the applicant shall obtain a license and pay the tax imposed under the provisions of law for the privilege of engaging, or continuing, in such business. Such permit shall be displayed at all times in some conspicuous place at the applicant's place of business. No permit shall be transferable.

SOURCES: Codes, 1942, § 10238; Laws, 1934, ch. 127.

Cross References — Responsibility of alcoholic beverage permit holder to furnish brands of beer or wine owned transported, sold or possessed to chairman of Tax Commission, see § 27-71-503.

Labelling of light wines and beer with respect to alcoholic content, see § 27-71-509.

Display of permits issued under local option alcohol beverage control law, see § 67-1-61.

Transfer of permit issued under local option alcohol beverage control law, see § 67-1-67.

Penalty for violation, see § 67-3-69.

JUDICIAL DECISIONS

1. In general.

In a suit for the breach of a commercial lease, the tenant was not prohibited from claiming lost profits resulting from the club's sale of beer where he did not have a license to sell beer and any failure in obtaining a liquor license was not a contributing cause of the damages that he tenant sought. Evans v. Clemons, 872 So. 2d 23 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032 (Miss. 2004).

Where local option applies, the state proposes to maintain control as to who may sell beer, as well as when and where. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

The applicant for a license to sell beer at retail has no inherent right to the permit. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

The granting of a permit to sell beer at retail ordinarily rests in the sound discretion of the official to whom the duty is committed, and the refusal to grant such permit deprives no one of any personal property right, but merely deprives him of the privilege which it is in the discretion of the proper authorities to grant or withhold. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

The burden of showing the necessary moral character ordinarily rests upon the applicant for a license to sell beer. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

The rejection of an application for a license to sell beer at retail may not be arbitrary or capricious. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

Since the commissioner, in denying the applicant a permit to sell beer at retail, was not acting ministerially but in the exercise of discretion, the action of the trial judge in refusing to grant the writ of mandamus was affirmed. Powell v. State

Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

Those who avail themselves of legislative privilege of engaging in sale of beer accept the privilege under the conditions attached to its exercise. Stone v. Farish, 199 Miss. 186, 23 So. 2d 911 (1945).

RESEARCH REFERENCES

ALR. Transfer of retail liquor license or permit from one location to another. 98 A.L.R.2d 1123.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 134 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 21-44 (issuance or refusal to issue licenses).

CJS. 48 C.J.S., Intoxicating Liquors § 209.

§ 67-3-25. Sales authorized by permit; expiration of permit; annual renewal; temporary permits; contents of permit.

(1) Any permit issued authorizing the sale of light wines and/or beer for consumption shall be construed to authorize the sale of light wines and/or beer by the bottle, by the glass or by draught, and in or from the original package.

(2) The commissioner is authorized to establish, in his discretion, dates for the expiration of permits issued under this chapter.

(3) Except as otherwise provided in this section, permits shall be issued for twelve (12) months and shall be renewed annually on the first day of the month in which the permit expires. The commissioner may issue temporary permits for less than a full year. All permits shall show the effective date and expiration date of the permit, the business location, individual or business name and mailing address of the permittee.

SOURCES: Codes, 1942, §§ 10213, 10216; Laws, 1934, ch. 171; Laws, 1946, ch. 383; Laws, 1977, ch. 337; Laws, 2011, ch. 396, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment rewrote the section.

Cross References — Renewal of permits for sale of intoxicating liquor, see § 67-1-63.

§ 67-3-27. Licenses.

Before any person shall engage in the business of manufacturer, wholesaler, distributor or retailer of light wines or beer, he shall apply to the commissioner for a license to engage in such business, and shall pay to the commissioner the specific tax imposed by Section 27-71-303, for the privilege of engaging in such business. The commissioner upon receipt of such tax shall issue to such person a privilege license to engage in or continue in such business for a period of time not to exceed one (1) year. No such license shall be issued to the applicant unless such applicant shall have obtained from the commissioner a permit as required in Section 67-3-17. A brewpub shall obtain all necessary federal licenses and permits prior to obtaining any license under this chapter.

All privilege licenses issued under the provisions of this section shall be renewed annually on or before the first day of the month in which the current license expires.

SOURCES: Codes, 1942, § 10239; Laws, 1934, ch. 127; Laws, 1979, ch. 423, § 3; Laws, 1998, ch. 308, § 9, eff from and after July 1, 1998.

Cross References — Payment of excise or privilege tax on light wines or beers by persons licensed under this section, see § 27-71-307.

Reports of wholesaler and preservation of invoices relating to alcoholic beverage taxes, see § 27-71-325.

Other privilege tax not to be levied, see § 27-71-343.

Privilege tax to be levied by municipality, see § 27-71-345.

Prohibition on manufacturers of light wine or beer acting as wholesalers or distributors, see § 67-3-46.

Penalty for violation, see § 67-3-69.

JUDICIAL DECISIONS

1. In general.

Municipality may enforce municipal ordinance regarding sale of beer within 1500 feet of church against convenience stores notwithstanding fact that owner of one store has located store on basis of mayor's assurance that location complied with ordinance and that municipality has allowed sale of beer at another convenience store for some 12 years; furthermore renewal of permits for stores to sell beer may be denied on basis of noncompliance with ordinance. Suggs v. Town of Caledonia, 470 So. 2d 1055 (Miss. 1985).

A licensee has no vested property right in a license to sell beer and light wines, which is simply a revocable permit or alienable privilege, with reference to a business which has long been recognized as peculiarly affecting the public interest and subject to governmental regulations. Miller v. Board of Supvrs., 230 Miss. 849, 94 So. 2d 604 (1957).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 87 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 21-44 (issuance or refusal to issue licenses).

CJS. 48 C.J.S., Intoxicating Liquors §§ 126 et seq.

§ 67-3-28. Brewpub alcoholic content testing requirements.

(1) Any person desiring to engage in business as a brewpub shall file with the commissioner, along with the application required by Section 67-3-17, Mississippi Code of 1972, a certificate issued by a licensed testing laboratory indicating that such laboratory has tested a sample of the applicant's beer or light wine, or both, and that the alcohol content of such sample of beer does not exceed eight percent (8%) by weight and the alcoholic content of such light wine does not exceed five percent (5%) by weight.

(2) Every brewpub shall be required to submit to random testing by the commissioner to determine whether any beer being manufactured, sold, kept, stored or secreted by the license holder contains an alcohol content greater

than eight percent (8%) by weight and any light wine being manufactured, sold, kept, stored or secreted by the license holder contains an alcoholic content greater than five percent (5%) by weight. The commissioner shall establish and administer testing standards and procedures to be used in such random testing. The brewpub licensee shall be responsible for all costs incurred by the commissioner in conducting random testing under this section.

SOURCES: Laws, 1998, ch. 308, § 15; Laws, 2012, ch. 323, § 9, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "sample of beer does not exceed eight percent (8%) by weight and the alcoholic content of such light wine does not exceed five percent (5%) by weight" for "sample does not exceed four percent (4%) by weight." at the end of (1); and rewrote the first sentence in (2).

§ 67-3-29. Revocation or suspension of permit by commissioner.

(1) The commissioner, or a hearing officer or the board of review, as designated by the commissioner, after a show cause hearing, shall revoke or suspend any permit granted by authority of this chapter to any person who shall violate any of the provisions of this chapter or the revenue laws of this state relating to engaging in transporting, storing, selling, distributing, possessing, receiving or manufacturing of wines or beers, or any person who shall hereafter be convicted of the unlawful sale of intoxicating liquor, or any person who shall allow or permit any form of illegal gambling or immorality on the premises described in such permit. The commissioner shall not revoke or suspend a permit of a retailer for the sale of light wine or beer to a person under the age of twenty-one (21) years until there has been a conviction of the permit holder or an employee of the permit holder for such violation.

(2) If any person exercising any privilege taxable under the provisions of Chapter 71 of Title 27, Mississippi Code of 1972, shall willfully neglect or refuse to comply with the provisions of such chapter, or any rules or regulations promulgated by the commissioner under authority of such chapter, or the provisions of this chapter, including maintaining the qualifications of an applicant under Section 67-3-19, during the permit period, the commissioner shall be authorized to revoke or suspend the permit theretofore issued to the person. Any person whose permit shall have been revoked by the commissioner shall be thereafter prohibited from exercising any privilege under the provisions of Chapter 71 of Title 27, Mississippi Code of 1972, for a period of two (2) years from the date of the revocation. The commissioner may, however, for good cause shown, grant a new permit upon such conditions as the commissioner may prescribe. Any person whose permit shall have been suspended by the commissioner shall be prohibited from exercising any privilege under the provisions of Chapter 71 of Title 27, Mississippi Code of 1972, during the period of the suspension. Failure of the person to comply with the terms of the suspension shall be cause for revocation of his permit, in addition to the other penalties provided by law.

(3) In addition to the reasons specified in this section and other provisions of this chapter, the commissioner shall be authorized to suspend the permit of any permit holder for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a permit suspended for that purpose, shall be governed by Section 93-11-157 or Section 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or Section 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1942, §§ 10213, 10257; Laws, 1934, chs. 127, 171; Laws, 1946, ch. 383; Laws, 1973, ch. 467, § 2; Laws, 1991, ch. 368, § 2; Laws, 1996, ch. 507, § 18; Laws, 2005, ch. 499, § 31, eff from and after July 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in subsection (1) of this section. The sentence "The commissioner shall not revoke or suspend a permit of a retailer for the sale of light wine or beer to a person under the age of twenty-one (21) years until there has been a conviction of the permit holder or an employee of the permit holder for such violation" was added at the end. The Joint Committee ratified the correction at its June 3, 2003 meeting.

Cross References — Suspension and revocation of permits issued under local option alcohol beverage control law, see § 67-1-71.

JUDICIAL DECISIONS

1. In general.

Sections authorizing revocation of permit for wholesale distribution of beer under certain prescribed circumstances upon giving notice as required by Code 1942, § 10257, are constitutional. Stone v. Farish, 199 Miss. 186, 23 So. 2d 911 (1945).

A permit or license for the wholesale distribution of beer is not a property or contract right, and its revocation need seek no judicial sanction, nor is a judicial proceeding available to forbid the proper exercise of such revocation. Stone v. Farish, 199 Miss. 186, 23 So. 2d 911 (1945).

Although ordinarily a license may have aspects of property, the control retained in respect to the granting of a permit for wholesale distribution of beer strips the permit of that quality which requires divestiture only by judicial process. Stone v. Farish, 199 Miss. 186, 23 So. 2d 911 (1945).

Those who avail themselves of legislative privilege of engaging in sale of beer accept the privilege under the conditions attached to its exercise. Stone v. Farish, 199 Miss. 186, 23 So. 2d 911 (1945).

While absolute administrative power to revoke permit for wholesale distribution of beer excludes judicial review where exercised under condition of its bestowal, it does not imply arbitrary or capricious exercise. Stone v. Farish, 199 Miss. 186, 23 So. 2d 911 (1945).

Administrative questions regarding revocation of permit for wholesale distribution of beer belong within the legislative orbit, and, although judicial oversight can never be absolutely forbidden, it is measured by the same considerations which apply to direct legislative acts. Stone v. Farish, 199 Miss. 186, 23 So. 2d 911 (1945).

Order of commissioner revoking permit for wholesale distribution of beer upon sufficient grounds prescribed in the sections authorizing such revocation, after notice as required by Code 1942, § 10257 and a hearing, was final, where the notice to the permit holder set out the grounds for such revocation which were confirmed by the commissioner's order. Stone v. Farish, 199 Miss. 186, 23 So. 2d 911 (1945).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 148 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 61-84 (revocation or suspension of licenses).

CJS. 48 C.J.S., Intoxicating Liquors §§ 222 et seq.

§ 67-3-31. Judicial revocation or suspension of permit; affidavit and complaint.

Proceedings for the revocation or suspension of any permit authorizing the sale of beer or wine at retail for a violation of any of the provisions of Section 67-3-53 may be brought in the circuit or county court of the county in which the licensed premises are located. Such proceedings shall be entitled in the name of the state and against the permittee and shall be instituted by filing a complaint with the clerk of the court. The complaint may be filed by the county prosecuting attorney of the county upon his own initiative or, then by the district attorney of the district in which the county is located, and it shall be mandatory upon the county prosecuting attorney, or district attorney, as the case may be, to file a complaint when requested to do so by a peace officer or any person as provided in this section. Any peace officer within his jurisdiction or any enforcement officer of the Alcoholic Beverage Control Division within the Department of Revenue who learns that a retail permittee within his jurisdiction has violated any of the provisions of such section shall file with the county prosecuting attorney of the county in which the licensed premises are located, or, then with the district attorney of the district in which such county is located, an affidavit specifying in detail the facts alleged to constitute such violation, and requesting that a complaint be filed against the permittee for the revocation or suspension of his permit. A like affidavit may be filed with the county prosecuting attorney, or district attorney, as the case may be, by any person who resides, and has for at least one (1) year prior thereto resided within the county in which the licensed premises are located requesting that a complaint be filed for the revocation or suspension of the permittee's permit. Promptly upon receiving any such affidavit the county prosecuting attorney, or district attorney, shall prepare a proper complaint, which shall be signed and sworn to by the person or persons filing the affidavit with him, and the county prosecuting attorney or district attorney shall file the complaint with the clerk of the circuit or county court.

SOURCES: Codes, 1942, § 10223; Laws, 1934, ch. 171; Laws, 1944, ch. 133, §§ 2-4; Laws, 1997, ch. 558, § 3; reenacted and amended, 1998, ch. 520, § 2; Laws, 2003, ch. 392, § 2; Laws, 2005, ch. 462, § 2; Laws, 2007, ch. 462, § 4; Laws, 2011, ch. 379, § 2, eff from and after July 1, 2011.

Editor's Note — Laws of 1998, ch. 520, § 5, provides as follows:

"SECTION 5. Section 5, Chapter 558, Laws of 1997, which repeals, effective July 1, 1998, Sections 67-1-37, 67-3-31, 67-3-37 and 67-3-75, Mississippi Code of 1972, is repealed."

Amendment Notes — The 2011 amendment substituted "Department of Revenue" for "State Tax Commission" in the third sentence; and deleted the version of the section effective from and after July 1, 2011.

Cross References — Suspension and revocation of permits issued under local option alcohol beverage control law, see § 67-1-71.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 157, 158 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 61-84 (revocation or suspension of licenses).

§ 67-3-33. Judicial revocation or suspension of permit; service of notice.

Upon filing a complaint with the clerk of the court, the county prosecuting attorney or district attorney filing the same shall promptly move the court to set the complaint for hearing. The court shall set the complaint for hearing at an early date in term time or in vacation and such proceedings shall have precedence for trial over all civil actions. Upon a date for trial being set by the court, the county prosecuting attorney or district attorney shall serve or cause to be served upon the permittee in accordance with the Mississippi Rules of Civil Procedure a notice of the filing of said complaint, together with a copy of said complaint, and shall set forth in said notice the time and place of the hearing thereon. Said notice shall be served upon the permittee at least ten (10) days prior to the date set for hearing if personal service be made. If service be made by mail, such notice shall be deposited in the United States mail not less than twelve (12) days prior to the date set for hearing. A copy of said complaint and notice of hearing thereon shall also be mailed to the commissioner by the county prosecuting attorney or district attorney.

SOURCES: Codes, 1942, § 10223; Laws, 1934, ch. 171; Laws, 1944, ch. 133, §§ 2-4; Laws, 1991, ch. 573, § 118, eff from and after July 1, 1991.

Cross References — Suspension and revocation of permits issued under local option alcohol beverage control law, see § 67-1-71.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 157, 158 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 234 et seq.

§ 67-3-35. Judicial revocation or suspension of permit; hearing and judgment.

The complaint shall be heard by the court without a jury. If the court shall find upon the hearing that the offense or offenses charged in the complaint have been established by the evidence, the court shall order the revocation or suspension of the permit. If the court finds that the permittee has not previously violated the law in the operation of his licensed business, and that no permit or license held by him has previously been suspended or revoked, and if it appears to the satisfaction of the court that there is reasonable ground to expect that the permittee will not again commit the offense or offenses charged in the complaint and that to revoke the permit would be unduly severe, then the court may suspend the permit for such period of time as the court deems proper. However, if the permittee has previously had his permit suspended or revoked, it shall be mandatory upon the court upon a finding of guilty to revoke the said permit. The judgment of the court revoking or suspending such permit shall not be superseded or stayed during the pendency of an appeal therefrom. A certified copy of the final order or decree of the court shall be forwarded by the clerk of the court to the commissioner.

After the filing of a complaint with the clerk of the court for the revocation or suspension of a permit, the court in which the complaint is filed shall retain jurisdiction to hear and determine such complaint and to enter judgment revoking or suspending such permit. For the purpose of such hearing and as to the effect of the judgment of the court entered pursuant thereto, the permit shall be in full force and effect even though the permittee, after filing of such complaint, may have surrendered his permit, or such permit may have expired, or the rights of the permittee thereunder may have otherwise terminated. It is the purpose of this section to preclude the permittee from avoiding the effect of a judgment of revocation by a court by reason of conditions arising subsequent to the filing of a complaint.

SOURCES: Codes, 1942, § 10223; Laws, 1934, ch. 171; Laws, 1944, ch. 133, §§ 2-4.

Cross References — Suspension and revocation of permits issued under local option alcohol beverage control law, see § 67-1-71.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 157, 158 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 234 et seq.

§ 67-3-37. Judicial revocation or suspension of permit; enforcement.

It shall be the duty of the county prosecuting attorney or the district attorney, as the case may be, to file complaints as provided in Section 67-3-31 and to prosecute diligently and without delay all complaints filed by him.

It shall be the duty of all peace officers, within their jurisdiction, and all enforcement officers of the Alcoholic Beverage Control Division of the Department of Revenue to enforce the provisions of Section 67-3-53 and they shall frequently visit all licensed premises within their jurisdiction to determine whether such permittees are complying with the laws. They shall promptly investigate all complaints made to them by any citizen relative to any alleged violations of such section within their jurisdiction. When any peace officer or enforcement officer of the Alcoholic Beverage Control Division has knowledge of a violation of such section committed by a permittee within his jurisdiction, it shall be his duty forthwith to file an affidavit with the county prosecuting attorney or district attorney requesting that a complaint be filed for the revocation or suspension of the permit of the permittee.

SOURCES: Codes, 1942, § 10223; Laws, 1934, ch. 171; Laws, 1944, ch. 133, §§ 2-4; Laws, 1997, ch. 558, § 4; reenacted and amended, 1998, ch. 520, § 3; Laws, 2002, ch. 570, § 8; Laws, 2003, ch. 392, § 3; Laws, 2005, ch. 462, § 3; Laws, 2007, ch. 462, § 5; Laws, 2011, ch. 379, § 3, eff from and after July 1, 2011.

Editor's Note — Laws of 1998, ch. 520, § 5, provides as follows:

"SECTION 5. Section 5, Chapter 558, Laws of 1997, which repeals, effective July 1, 1998, Sections 67-1-37, 67-3-31, 67-3-37 and 67-3-75, Mississippi Code of 1972, is repealed."

Amendment Notes — The 2011 amendment substituted "Department of Revenue" for "State Tax Commission" in the first sentence in the second paragraph; and deleted the version of the section effective from and after July 1, 2011.

Cross References — Suspension and revocation of permits issued under local option alcohol beverage control law, see § 67-1-71.

JUDICIAL DECISIONS

1. In general.

The Mississippi Light Wines and Beer Law does not confer upon agents of the state tax commission rights of inspection similar to those conferred upon agents of the alcoholic beverage commission under Code 1942, § 10265-17. Jolliff v. State, 215 So. 2d 234 (Miss. 1968), but see Cumbest v. Commissioners of Election, 416 So. 2d 683 (Miss. 1982).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 160.

CJS. 48 C.J.S., Intoxicating Liquors § 225.

§ 67-3-39. Judicial revocation or suspension of permit; jurisdiction of courts is not exclusive.

The jurisdiction conferred upon the circuit and county courts to hear and determine complaints for the revocation or suspension of permits shall not be exclusive and any authority conferred on the commissioner to revoke or suspend licenses shall remain in full force and effect, and the commissioner shall have authority to revoke or suspend permits for a violation of Section 67-3-53 in the manner provided in subsection (2) of Section 67-3-29 for the revocation of permits. However, when a complaint is filed with the court any proceedings which may then be pending before the commissioner against the same permittee on the same charges shall abate and no proceedings for the revocation or suspension of a permit for a violation of the provisions of Section 67-3-53 shall be filed with the commissioner when proceedings are pending before the court against the permittee on the same charges. The revocation or suspension of a permittee's state permit by the court or by the commissioner shall automatically revoke or suspend any municipal license or permit held by such person. The revocation or suspension of a permittee's permit shall be in addition to and not in lieu of or limitation of any other penalty imposed by law.

SOURCES: Codes, 1942, § 10223; Laws, 1934, ch. 171; Laws, 1944, ch. 133, §§ 2-4.

Cross References — Suspension and revocation of permits issued under local option alcohol beverage control law, see § 67-1-71.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 157, 158 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 234 et seq.

§ 67-3-41. Judicial revocation or suspension of permit; sections are cumulative.

Sections 67-3-31 through 67-3-41 and Section 67-3-53 are declared to be cumulative, amendatory, and supplemental to any and all other acts and laws of this state pertaining to the governing of the sale and distribution of light wines and beers as contained in Sections 27-71-301 through 27-71-347, Mississippi Code of 1972, and Sections 67-3-17, 67-3-23, 67-3-27, 67-3-29(2), 67-3-55, and 67-3-57.

SOURCES: Codes, 1942, § 10223; Laws, 1934, ch. 171; Laws, 1944, ch. 133, §§ 2-4.

§ 67-3-43. Repealed.

Repealed by Laws of 1973, ch. 467, § 3, eff from and after passage (approved April 9, 1973).

[Codes, 1942, § 10223.5; Laws, 1962, ch. 326]

Editor's Note — The substance of former § 67-3-43, relative to possession or sale of untaxed beer, or possession or sale of light wine or beer without proper permits, is now found in the second paragraph of § 67-3-57.

§ 67-3-45. Loans and extension of credit to retailers prohibited; brewpub exemption.

No manufacturer, distributor or wholesale dealer to whom or to which this chapter applies shall:

(a) Make any loan, directly or indirectly, or furnish any fixtures of any kind, directly or indirectly, to any retail dealer in light wines and/or beer;

(b) Have any interest, direct or indirect, in the business of or in the furnishings or fixtures or in the premises used by any such retail dealer in connection with his or its business;

(c) Have any lien on any such property of any such retail dealer; or

(d) Sell light wines and/or beer to any such retail dealer on credit.

This section shall not apply to a brewpub licensed pursuant to Article 3, Chapter 71, Title 27, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 10214; Laws, 1934, ch. 171; Laws, 1966, ch. 656, § 1; Laws, 1998, ch. 308, § 10, eff from and after July 1, 1998.

Cross References — Prohibition of credit to retailers under local option alcohol beverage control law, see § 67-1-79.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 94.

CJS. 48A C.J.S., Intoxicating Liquors § 695-698.

§ 67-3-46. Manufacturers of light wines or beer prohibited from acting as wholesalers or distributors.

(1) The provisions of subsection (2) of this section apply to the following entities:

(a) Any person engaged in the business of brewing or manufacturing beer or in the business of manufacturing or producing light wines;

(b) An officer, director, agent or employee of an entity described in paragraph (a) of this subsection;

(c) An affiliate of an entity described in paragraph (a) of this subsection, regardless of whether the affiliation is corporate or by management, direction or control.

(2) No entity named in subsection (1) of this section may have any interest in the license, business, assets or corporate stock of a wholesaler or distributor to whom this chapter applies, except a security interest granted to the entity of the type provided for the uniform commercial code in products sold to a wholesaler or distributor until the full purchase price has been paid therefor.

SOURCES: Laws, 1980, ch. 342, § 1, eff from and after July 1, 1980.

Cross References — License tax on retailers, wholesalers and manufacturers of light wines and beer, see § 27-71-303.

Requirement of license or permit for brewing, manufacturing or selling beer or light wine, see § 67-3-15.

Qualifications of retailer of beer or light wine, see § 67-3-19.

Qualifications for permit for distribution of beer or light wine, see § 67-3-21.

Licenses for wholesalers, retailers, manufacturers or distributors of beer or light wines, see § 67-3-27.

Native wines, see §§ 67-5-1 et seq.

RESEARCH REFERENCES

ALR. What constitutes "sale" of liquor in violation of statute or ordinance. 89 A.L.R.3d 551.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 87-90, 93-100, 114 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Intoxicating Liquors, Forms 21-44 (issuance or refusal to issue licenses).

CJS. 48 C.J.S., Intoxicating Liquors §§ 126-182, 222-233, 240.

§ 67-3-47. Manufacturer of beer operating brewery permitted to provide limited amounts of beer on premises for tasting or sampling subject to certain conditions.

(1) A person having a permit to manufacture or brew beer under this chapter and who operates a brewery may offer and provide limited amounts of beer on the premises of the brewery for the purpose of tasting or sampling, subject to the following conditions:

(a) The beer provided for tasting or sampling must be manufactured in the State of Mississippi by the holder of the permit;

(b) The beer may be provided only to persons on the premises of the brewery at no cost and for consumption on the premises of the brewery;

(c) The beer may be provided for tasting or sampling between the hours of 8:00 a.m. and 10:00 p.m. on the same day and only in conjunction with a structured tour of the brewery and related facilities which must include the entire manufacturing and brewing processes and methods used at the brewery;

(d) No one under twenty-one (21) years of age may participate in the tasting or sampling, and a sign indicating that prohibition shall be placed in a visible location at the entrance to the area where the tasting or sampling will be conducted;

(e) An individual size sample of beer shall not exceed six (6) ounces, and no more than six (6) samples of beer may be provided to an individual within a twenty-four-hour period; and

(f) The holder of the license operating the brewery shall keep an accurate accounting of the various beers provided and consumed as samples.

(2) For the purposes of this section, the term 'brewery' means and has the same definition as that term has in 26 USCS 5402.

SOURCES: Laws, 2012, ch. 569, § 1, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 569, § 5, provides:

"SECTION 5. Section 1 of this act shall be codified as a separate section in Chapter 3, Title 67, Mississippi Code of 1972."

A former § 67-3-47 [Codes, 1942, § 10215; Laws, 1934, ch. 171; Laws, 1986, ch. 337, § 7; Repealed by Laws, 1997, ch. 499, § 13, effective from and after July 1, 1997] provided a prohibition against unauthorized use of labels or markings of identification.

§ 67-3-48. Repealed.

Repealed by Laws of 2000, ch. 435, § 12, eff from and after July 1, 2000. [Laws, 1997, ch. 499, § 2, eff from and after July 1, 1997]

Editor's Note — Former § 67-3-48 required the State Tax Commission to provide suitable labels or markings of identification for the purpose of taxation of beer inspected and authorized by the commission to be sold, and prohibited the unauthorized use of such labels.

§ 67-3-49. Manufacture, sale or storage of light wine with alcoholic content of more than 5% or beer with alcoholic content of more than 8% prohibited; exception.

(1) Except as otherwise provided in this section, it shall be unlawful for any brewer or manufacturer or distributor or wholesale dealer of or in light wines and/or beer to manufacture or knowingly bring upon his premises or keep thereon any wine of an alcoholic content of more than five percent (5%) by weight and beer of an alcoholic content of more than eight percent (8%) by weight, or any distilled spirits of any alcoholic content whatsoever. Any person that shall add to or mix with any beer or light wine any alcoholic or other liquid, or any alcohol cube or cubes, or any other ingredient or ingredients that will increase or tend to increase the alcoholic content of such liquor, or any person that shall knowingly offer for sale any liquor so treated, shall be guilty of a misdemeanor and punished as hereinafter provided in this chapter. The commissioner shall take any action he considers necessary to ensure that light wine and/or beer manufactured at a brewpub complies with the provisions of this section.

(2) A brewer or manufacturer of light wine or beer may manufacture and keep upon his premises beer of an alcoholic content of more than eight percent (8%) by weight if the beer is manufactured for legal sale in another state.

SOURCES: Codes, 1942, § 10219; Laws, 1934, ch. 171; Laws, 1998, ch. 306, § 9; Laws, 1998, ch. 308, § 11; Laws, 2012, ch. 323, § 10; Laws, 2012, ch. 501, § 6, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 6 of Chapter 501, Laws of 2012, effective July 1, 2012 (approved April 30, 2012), amended this section. Section 10 of Chapter 323, Laws of 2012, effective July 1, 2012 (approved April 5, 2012), also amended this section. As set out above, this section reflects the language of Section 6 of Chapter 501, Laws of 2012, which contains language that specifically provides that it supersedes § 67-3-49 as amended by Laws of 2012, ch.323.

Editor's Note — Section 9 of ch. 306, Laws, 1998, effective July 1, 1998, amended this section. Section 11 of ch. 308, Laws, 1998, effective July 1, 1998, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 20, 1998 meeting of the Committee.

Amendment Notes — The first 2012 amendment (ch. 323), in the first sentence, deleted "beer or" preceding "wine of an alcoholic content of not more than five percent (5%) by weight" and added "and beer of an alcoholic content of not more than eight percent (8%) by weight" thereafter.

The second 2012 amendment (ch. 501), rewrote the first sentence in (1); and added (2).

Cross References — Rule making it unlawful to manufacture intoxicating liquors, see § 97-31-21.

Rule making it unlawful to possess or sell intoxicating liquors, see § 97-31-27.

§ 67-3-51. Sales from other than original containers prohibited; exception.

(1) It shall be unlawful for any person to sell, or offer to sell, or keep for sale any bottled beer or bottled light wine except the same be in the original bottle or in the original package containing bottles, each of which bottles shall bear the original label and the full name of the brewer or manufacturer of the contents of such bottle, both on the label and on the cap or cork of such bottle in the case of beer, and on the label only in the case of light wine.

(2) It shall be unlawful for any person to sell, or offer for sale, or keep for sale any beer or light wine in the original package or packages unless each such original package (whether barrel or other container, and whether containing liquor in bottles or otherwise) shall have plainly stamped on the container or label for each such container the full name of the manufacturer of the liquor therein contained.

(3) It shall be unlawful for any person to sell on draught any beer or light wine except the same be drawn from the original barrel or other container, which such container shall have plainly stamped on each end thereof the full name of the manufacturer of such liquor.

(4) This section shall not apply to beer offered and provided on the premises of a brewery for the purpose of tasting or sampling as authorized in Section 67-3-47.

SOURCES: Codes, 1942, § 10220; Laws, 1934, ch. 171; Laws, 1987, ch. 355, § 3; Laws, 2012, ch. 569, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added (4).

Cross References — Labeling requirements concerning light wines and beer, see § 27-71-509.

§ 67-3-52. Sale of beer or light wine obtained outside state.

It shall be unlawful for any person holding a permit authorizing the sale of beer or light wine at retail to obtain such beer or light wine from any source outside of the State of Mississippi. Any person who violates the provisions of this section, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court. Any person convicted of violating this section, or any rules or regulations promulgated by the commissioner with regard to the unlawful acts described in this section, shall forfeit his permit. Any person whose permit has been forfeited pursuant to this section shall not be eligible for a permit issued by the commissioner for a period of five (5) years after the date of such forfeiture. In addition, no permit shall be issued for the same location, for which an offender has forfeited a permit pursuant to this section, to a spouse, offspring or sibling of the offender when to do so would circumvent the purposes of this section. The commissioner may assess a retailer who violates this section the amount of excise taxes due on the unlawfully imported beer or light wine, together with a penalty in the amount of four (4) times the state excise taxes due or One Hundred Dollars ($100.00) per case, whichever is greater.

SOURCES: Laws, 1997, ch. 499, § 1; Laws, 1998, ch. 466, § 1; Laws, 2000, ch. 435, § 9, eff from and after July 1, 2000.

§ 67-3-53. Unlawful acts.

In addition to any act declared to be unlawful by this chapter, or by Sections 27-71-301 through 27-71-347, and Sections 67-3-17, 67-3-27, 67-3-29 and 67-3-57, it shall be unlawful for the holder of a permit authorizing the sale of beer or light wine at retail or for the employee of the holder of such a permit:

(a) To sell or give to be consumed in or upon any licensed premises any beer or light wine between the hours of midnight and seven o'clock the following morning or during any time the licensed premises may be required to be closed by municipal ordinance or order of the board of supervisors; however, in areas where the sale of alcoholic beverages is legal under the provisions of the Local Option Alcoholic Beverage Control Law and the hours for selling those alcoholic beverages have been extended beyond midnight for on-premises permittees under Section 67-1-37, the hours for selling beer or light wines are likewise extended in areas where the sale of beer and light wines is legal in accordance with the provisions of this chapter.

(b) To sell, give or furnish any beer or light wine to any person visibly or noticeably intoxicated, or to any habitual drunkard, or to any person under the age of twenty-one (21) years.

(c) To permit in the premises any lewd, immoral or improper entertainment, conduct or practices.

(d) To permit loud, boisterous or disorderly conduct of any kind upon the premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community in which the business is located.

(e) To permit persons of ill repute, known criminals, prostitutes or minors to frequent the licensed premises, except minors accompanied by parents or guardians, or under proper supervision.

(f) To permit or suffer illegal gambling or the operation of illegal games of chance upon the licensed premises.

(g) To receive, possess or sell on the licensed premises any beverage of any kind or character containing more than five percent (5%) of alcohol by weight except any beer containing not more than eight percent (8%) of alcohol by weight, unless the licensee also possesses an on-premises permit under the Local Option Alcoholic Beverage Control Law.

(h) To accept as full or partial payment for any product any coupons that are redeemed directly or indirectly from a manufacturer, wholesaler or distributor of light wine or beer.

SOURCES: Codes, 1942, § 10223; Laws, 1934, ch. 171; Laws, 1944, ch. 133, §§ 2-4; Laws, 1974, ch. 568; Laws, 1985, ch. 431, § 1; Laws, 1991, ch. 368, § 3; Laws, 1995, ch. 398, § 1; Laws, 1998, ch. 306, § 10; Laws, 2008, ch. 442, § 19; Laws, 2012, ch. 323, § 11; Laws, 2012, ch. 369, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 11 of Chapter 323, Laws of 2012, effective July 1, 2012 (approved April 5, 2012), amended this section. Section 1 of Chapter 369, Laws of 2012, effective July 1, 2012 (approved April 17, 2012), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Amendment Notes — The first 2012 amendment (ch. 323) inserted "except any beer containing not more than eight percent (8%) of alcohol by weight" following "of alcohol by weight" near the end of (g).

The second 2012 amendment (ch. 369), added (h).

Cross References — Tax Commission's regulatory powers, see § 67-1-37.

Exemption for persons over age of 18 with parental consent, or who are military personnel, or who are employees of establishments licensed to sell light wine or beer, see § 67-3-54.

Penalty for sale to underaged customer, see § 67-3-69.

Penalties for purchase of light wine or beer by person under age of 21, see § 67-3-70.

JUDICIAL DECISIONS

1. In general.
2. Minors.

1. In general.

In an action arising from a motor vehicle accident caused by an intoxicated minor who allegedly smoked marijuana and drank beer purchased other than at the defendant restaurant, the defendant could be found liable if its negligence in selling beer consumed by the minor was a contributing case to the accident; it was not necessary that the defendant's negligence be the sole proximate cause of the accident. Delahoussaye v. Mary Mahoney's, Inc., 783 So. 2d 666 (Miss. 2001).

In an action arising from a motor vehicle accident caused by a minor who alleged that he did not purchase beer from the defendant restaurant, judgment for the defendant restaurant was reversed based on inadequate jury instruction; the jury should have been instructed that it could find negligence per se if it found that the restaurant sold alcohol to another minor and that it could then hold the restaurant liable if it concluded that it was foreseeable that the minor to whom the alcohol was sold would share that alcohol with other minors. Delahoussaye v. Mary Mahoney's, Inc., 783 So. 2d 666 (Miss. 2001).

Genuine issue of material fact existed as to whether restaurant had illegally sold beer to minor who subsequently struck two other vehicles with truck, injuring motorist; thus, summary judgment for restaurant owner in motorist's negligence action was precluded. Delahoussaye v. Mary Mahoney's, Inc., 696 So. 2d 689 (Miss. 1997).

Ordinance prohibiting commercial establishments from allowing consumption of alcoholic beverages between midnight and 7:00 a.m., which defined "consumption" to include possession in open containers as well as ingestion, was not preempted be statute expressly permitting possession of alcoholic beverages in "wet" municipalities absent clear expression of legislative intent to permit consumption, as opposed to mere possession, without limitation in wet areas, given broad grant of authority to municipalities to regulate impact of alcoholic beverages upon public health, morals, and safety and public policy favoring prevention of alcohol-related altercations and motor vehicle accidents, as limiting possession of opened containers was reasonable and necessary to enforce limitations on consumption. Maynard v. City of Tupelo, 691 So. 2d 385 (Miss. 1997).

Plaintiff, who had been injured in accident caused by drunk driver, and who had obtained default judgment against tavern that had allegedly violated § 67-3-53 by providing beer to driver, could not collect judgment from tavern's insurance company where insurance policy specifically excluded coverage for bodily injury resulting from violation of any statute or by reason of selling, serving, or giving any alcoholic beverage to person under influence of alcohol or that contributes to person becoming intoxicated. Williams v. United States Fid. & Guar. Co., 854 F.2d 106 (5th Cir. 1988).

Policy of liability insurance covering convenience store, which policy excluded coverage for bodily injury for which insured may be held liable by reason of selling, serving or giving of any alcoholic beverage to minor, excludes coverage for bodily injury by reason of selling, serving or giving of "beer", even though definition of alcoholic beverage under state law excludes beer, as common and ordinary meaning of beer is beverage containing alcohol; liability policy which excluded coverage for bodily injury for which store was liable by reason of selling of alcoholic beverage to minor did not cover bodily injuries sustained in accident caused by underaged motorist's intoxication from drinking beer which he bought at store, despite statute which excluded beer from definition of alcoholic beverages. Wilson ex rel. Wilson v. United States Fid. & Guar. Ins. Co, 659 F. Supp. 553 (S.D. Miss. 1987), aff'd, 830 F.2d 588 (5th Cir. 1987).

Sale of beer to minor in violation of statute constitutes negligence per se and trial court errs in refusing to grant such jury instruction. Bryant v. Alpha Entertainment Corp., 508 So. 2d 1094 (Miss. 1987).

Although Mississippi statutes relating to the sale of alcoholic beverages have sometimes been referred to as the Mississippi Dram Shop Law, such references are misleading because true dram shop acts are civil liability acts wherein the legislature specifically imposes liability on the seller of intoxicating liquors when a third party is injured as a result of the intoxication of the buyer where the sale caused or contributed to such intoxication. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986).

The statute which prohibits the sale of beer or wine to a minor was adopted for the protection of the general public and a minor is a member of the protected class. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986).

Society has a greater interest in protecting the welfare of minors than other groups listed in §§ 67-3-53(b), 67-1-81 and 67-1-83, because minors comprise a larger segment of society than do the others listed, and the future of society is dependent upon the welfare and protection of its youth. Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986).

In a wrongful death action alleging that defendant market was negligent in selling beer to a minor who was subsequently killed in an automobile accident, the trial court did not err in overruling defendant's demurrer where the complaint alleged a violation of the statute prohibiting the sale of beer to minors and that such negligence had contributed to the car wreck and decedent's death; although such statute was enacted for the legalization and regulation of the manufacture and sale of beer and wine, it was also adopted for the protection of the general public. Munford, Inc. v. Peterson, 368 So. 2d 213 (Miss. 1979).

An indictment charging the holder of a permit for the sale of beer and wine at retail with selling, giving or furnishing beer to a person under 18 years of age, was not defective in failing to charge the defendant with knowledge that his employee sold or gave beer to the minor, since the defendant's lack of knowledge of the acts of his employee was a defense and a question of fact for submission to the jury, and neither matters of evidence nor matters of defense need be averred in an indictment or information. State v. Labella, 232 So. 2d 354 (Miss. 1970).

An indictment under the wording of the statute making it unlawful for the holder of a permit for the sale of beer or wine at retail to sell, give or furnish any beer or wine to a person under the age of 18 years, was not defective for failing to charge the defendant with knowing that his employee sold or gave beer to a minor, where the statute itself does not use the word "knowing" and where the indictment was based upon an affidavit so worded as to show that the defendant knew of his employee's activities in selling beer to a minor. State v. Labella, 232 So. 2d 354 (Miss. 1970).

Subsection (a) of this section, when read in conjunction with Code 1942, § 10224, as a whole, and one section in context with the other, merely makes for the conclusion that though Code 1942, § 10224 refers to the authority of municipalities to prescribe hours opening or closing of businesses selling light wines and beer, those hours prescribed by the municipality must come within the limits of the hours established by state law. Watkins v. Navarrette, 227 So. 2d 853 (Miss. 1969).

Subsection (a) of this section means that municipalities have the authority to regulate the hours in which beer can be sold within the hours of 7:00 a.m. to midnight, and a municipal ordinance extending the hours in which beer can be sold beyond midnight and before 7:00 a.m. the following morning would be in conflict with this subparagraph; and it is well established that any conflict between an ordinance and a statute, the latter must prevail. Watkins v. Navarrette, 227 So. 2d 853 (Miss. 1969).

A charge under this section is supported by a finding of guilty of any one of the elements specified. Ellard v. State, 248 Miss. 313, 158 So. 2d 690 (1963).

2. Minors.

When a reasonable inference from the evidence is that a person exhibiting identification that he or she was an adult ordered drinks for minors to be consumed on a bar's premises, this inference is sufficient to create a fact question on the issue of the bar's tort liability under Miss. Code Ann. § 67-3-53(b). Moore v. K&J Enters., 856 So. 2d 621 (Miss. Ct. App. 2003), cert. dismissed, 2004 Miss. LEXIS 198 (Miss. 2004).

In a suit against a bar for furnishing alcohol to a minor who later caused an auto accident, the trial court properly excluded evidence of prior sales of alcohol to minors by the bar, as there was no purpose for such evidence other than to show that the bar had a propensity to sell alcohol to minors. Moore v. K&J Enters., 856 So. 2d 621 (Miss. Ct. App. 2003), cert. dismissed, 2004 Miss. LEXIS 198 (Miss. 2004).

In a suit against a bar for furnishing alcohol to a minor who later caused an auto accident, the trial court erred by directing a verdict for the bar, as the evidence created a fact question as to whether the bar knew or should have known that the buyer of drinks (who presented a false Mississippi driver's license showing he was 21) was giving them to minors. Moore v. K&J Enters., 856 So. 2d 621 (Miss. Ct. App. 2003), cert. dismissed, 2004 Miss. LEXIS 198 (Miss. 2004).

A municipal ordinance which made it a misdemeanor for any permit holder to allow persons under 21 years of age to enter on-premises retailers even if such persons were accompanied by parents, guardians, or under proper supervision was properly adopted under § 67-3-65 and was not invalid on the basis of its conflict with § 67-3-53. Collins v. City of Hazlehurst, 709 So. 2d 408 (Miss. 1997), cert. denied, 524 U.S. 904, 118 S. Ct. 2061, 141 L. Ed. 2d 138 (1998).

ATTORNEY GENERAL OPINIONS

Section 67-3-53(a) provides that a holder of a permit for the sale of beer and light wine may not sell or give to be consumed in or upon any licensed premises beer or light wine between the hours of midnight and seven o'clock the following morning. The statute applies only to businesses where beer or light wine is sold or given to be consumed in or upon the premises and does not apply to businesses where beer and light wine are sold for off premises consumption, such as grocery stores and convenience stores with permits for the sale of beer and light wine. Baker, November 1, 1996, A.G. Op. #96-0737.

An ordinance regulating the hours of sale of beer and light wines falls within the authority of a municipality to regulate hours of opening and closing pursuant to § 67-3-65; however, any specific hours prescribed by the municipality for the sale of such beverages must come within the limits of this section. Tyner, March 5, 1999, A.G. Op. #99-0074.

Section 67-3-53(a) allows the on-premises sale of beer and light wine beyond midnight by anyone who has a permit to sell beer or light wine in areas where the Alcoholic Beverage Control Division (ABC) of the State Tax Commission has extended the hours of on-premises sale for alcoholic beverages beyond midnight. Parker, May 12, 2003, A.G. Op. 03-0219.

Because, based on the language of Section 67-3-53, the Legislature has shown a clear intent to allow the on-premises sale of beer and light wine beyond midnight in areas where the on-premises sale of alcoholic beverages have been extended beyond midnight, therefore, the Legislature has preempted this area with a specific statute that would make any local ordinance to the contrary void. Parker, May 12, 2003, A.G. Op. 03-0219.

RESEARCH REFERENCES

ALR. Criminal offense of selling liquor to a minor or permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age. 12 A.L.R.3d 991.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 226 et seq.

45 Am. Jur. Proof of Facts 2d 631, Age of Person.

CJS. 48 C.J.S., Intoxicating Liquors §§ 376 et seq.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-3-54. Exemption for person over age 18 but less than 21; parental consent; military personnel; employee of establishment licensed to sell light wine or beer.

(1) A person who is at least eighteen (18) years of age but under the age of twenty-one (21) years may possess and consume light wine or beer with the consent of his parent or legal guardian in the presence of his parent or legal guardian, and it shall not be unlawful for the parent, legal guardian or spouse of such person to furnish light wine or beer to such person who is at least eighteen (18) years of age.

(2) A person who is at least eighteen (18) years of age and who is serving in the armed services of the United States may lawfully possess and consume light wine or beer on military property where the consumption of light wine or beer is allowed.

(3) A person who is under twenty-one (21) years of age shall not be deemed to unlawfully possess or furnish light wine or beer, if in the scope of his employment such person:

(a) Clears or buses tables that have glasses or other containers that contain or did contain light wine or beer;

(b) Waits on tables by taking orders for light wine or beer; or

(c) Stocks, bags or otherwise handles purchases of light wine or beer at a store.

SOURCES: Laws, 1985, ch. 431, § 4, eff from and after October 1, 1986.

Cross References — Sale to underaged customer, see § 67-3-53.

Penalty for sales to underaged customers, see § 67-3-69.

Penalties for purchase of light wine or beer by person under age of 21, see § 67-3-70.

RESEARCH REFERENCES

ALR. Criminal offense of selling liquor to a minor or permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age. 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift. 14 A.L.R.3d 1186.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 A.L.R.3d 551.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor. 89 A.L.R.3d 1256.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 220 et seq.

1 Am. Jur. Proof of Facts 315, Age.

CJS. 48 C.J.S. Intoxicating Liquor §§ 345-350, 460.

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-3-55. Possession or sale of light wine or beer not purchased from licensed or authorized manufacturer or wholesaler prohibited; brewpub exemption; breweries providing beer on premises for tasting or sampling exemption.

(1) It shall be unlawful for any retailer to possess for purpose of sale, to sell, or to offer to sell any light wine or beer which was not purchased from a wholesaler in this state who has a permit to sell such light wine or beer, except for beer or light wine that was brewed on the premises of the retailer who holds a permit as a brewpub pursuant to Article 3, Chapter 71, Title 27, Mississippi Code of 1972.

(2) It shall be unlawful for any wholesaler to possess for purpose of sale, to sell, or to offer to sell any light wine or beer which was not purchased from a manufacturer or importer of a foreign manufacturer authorized to sell such light wine or beer in this state.

(3) This section shall not apply to beer offered and provided on the premises of a brewery for the purpose of tasting or sampling as authorized in Section 67-3-47.

SOURCES: Codes, 1942, § 10246; Laws, 1934, ch. 127; Laws, 1973, ch. 467, § 1; Laws, 1978, ch. 381, § 1; Laws, 1980, ch. 342, § 2; Laws, 1998, ch. 308, § 12; Laws, 2012, ch. 569, § 3, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added (3).

Cross References — Licenses for manufacturer, wholesaler, or distributor of light wine or beer, see §§ 67-3-27 et seq.

Penalty for violation, see § 67-3-69.

JUDICIAL DECISIONS

1. In general.

Where evidence showed that defendant had in his possession cases of beer on which the state tax had not been paid or stamps affixed, and that the defendant intended to take the beer to a certain picnic but not for his own consumption, this could not warrant conviction of defendant under Code 1942, § 10233 which forbids wholesaler, distributor or retailer of beverages to have in his possession wine or beer manufactured or sold by manufacturer not complying with statutory requirements pertaining to sale and taxation of wine and beer. Mills v. State, 219 Miss. 194, 68 So. 2d 278 (1953).

In prosecution for possession of quantity of unpacked malt liquor, where evidence was not sufficient to sustain conviction for the offense, but might have been sufficient to sustain conviction for violation of other statutes relating to malt liquor, the judgment would be reversed and the cause remanded for further proceedings. Mills v. State, 219 Miss. 194, 68 So. 2d 278 (1953).

RESEARCH REFERENCES

ALR. Admissibility, in prosecution for illegal sale of intoxicating liquor, of other sales. 40 A.L.R.2d 817.

§ 67-3-57. Possession or sale of light wine or beer before permit secured or during time of revocation or suspension prohibited.

It shall be unlawful for any retailer to possess, sell or offer to sell, or to possess for purpose of sale, any light wine or beer at his place of business before securing a permit required by this chapter.

It shall be unlawful for any person to possess, sell or offer to sell any light wine or beer at his place of business after revocation of his permit or to purchase, to sell or offer to sell any light wine or beer during the period of suspension of his permit.

SOURCES: Codes, 1942, § 10246; Laws, 1934, ch. 127; Laws, 1973, ch. 467, § 1; Laws, 1986, ch. 337, § 8; Laws, 1997, ch. 499, § 11; Laws, 2000, ch. 435, § 10, eff from and after July 1, 2000.

Cross References — Penalties for violation of stamp tax regulations, see §§ 27-71-331 et seq.

Penalty for violation, see § 67-3-69.

JUDICIAL DECISIONS

1. In general.

Where evidence showed that defendant had in his possession cases of beer on which the state tax had not been paid or stamps affixed, and that the defendant intended to take the beer to a certain picnic but not for his own consumption, this could not warrant conviction of defendant under Code 1942, § 10233 which forbids wholesaler, distributor or retailer of beverages to have in his possession wine or beer manufactured or sold by manufacturer not complying with statutory requirements pertaining to sale and taxation of wine and beer. Mills v. State, 219 Miss. 194, 68 So. 2d 278 (1953).

In prosecution for possession of quantity of unpacked malt liquor, where evidence was not sufficient to sustain conviction for the offense, but might have been sufficient to sustain conviction for violation of other statutes relating to malt liquor, the judgment would be reversed and the cause remanded for further proceedings. Mills v. State, 219 Miss. 194, 68 So. 2d 278 (1953).

§ 67-3-59. Penalty for sales to persons not holding permits and sales of untaxed wine or beer; notice; disposition of proceeds.

(1) Except as provided in this subsection, sales by wholesalers, distributors or manufacturers to persons who do not hold valid permits are unlawful; and any wholesaler, distributor or manufacturer making such sales, or who sells any beer or light wine on which the tax provided by law has not been paid, shall, in addition to any other fines, penalties and forfeitures, be subject to a penalty of Twenty-five Dollars ($25.00) for each sale. If all other applicable taxes are paid, this penalty will not apply to the following: sales to employees of the wholesaler; sales to nonprofit charitable and civic organizations for special fund-raising events provided that the beer or light wine is not resold; sales to affiliated member associations.

(2) The commissioner may assess the penalty by giving notice by mail, demanding payment within thirty (30) days from date of delivery of the notice.

The proceeds of all penalties shall be deposited by the commissioner with the other monies collected by him and shall be disposed of as provided by law.

SOURCES: Codes, 1942, § 10217; Laws, 1934, ch. 171; Laws, 1978, ch. 386, § 1; Laws, 1991, ch. 368, § 4; Laws, 2005, ch. 499, § 32, eff from and after July 1, 2005.

§ 67-3-61. Common carriers shall furnish commissioner with duplicate bills of lading; penalty.

Every railroad company, express company, aeroplane company, motor transportation company, steamboat company, or other transportation company, or any person that shall transport into, from place to place within, or out of this state any light wines or beer, whether brewed or manufactured within this state or outside of this state, when requested by the commissioner, shall furnish him with a duplicate of the bill of lading covering the receipt for such liquor, showing the name of the brewer or manufacturer or distributor, and the name and address of the consignor and of the consignee, and the date when and place where received, and the destination and the quantity of such liquor received from the manufacturer or brewer or other consignor for shipment from any point within or without this state to any point within this state.

Any such company or person so transporting any such liquor that shall fail to comply with the requirements of this section, shall forfeit and pay to the State of Mississippi the sum of One Hundred Dollars ($100.00) for each such failure, to be recovered in any court of competent jurisdiction. The commissioner is hereby authorized and empowered to sue in his own name, on the relation and for the use of the State of Mississippi, for such recovery.

SOURCES: Codes, 1942, § 10218; Laws, 1934, ch. 171.

Cross References — Reports by common carriers to Public Service Commission, see § 77-7-261.

Rule making it unlawful to transport intoxicating liquors into or within state, see § 97-31-47.

Trial of common carrier for violation of intoxicating liquor regulations, see §§ 99-27-27 et seq.

§ 67-3-63. Records.

The commissioner shall cause a record to be kept of the names and places of business of all persons engaged in the brewing of beer, of all persons engaged in the manufacture of light wines, and of all persons engaged in the sale of light wines and/or beer, whether at retail or otherwise. He shall also cause a record to be kept of all beer and light wines (and of the amount thereof) brewed or manufactured by each brewery or winery, and of all such liquors (and of the amount thereof) sold by each brewery or winery, with the names and business addresses of the purchasers, and of all such liquors (and of the amount thereof) sold by every dealer other than a brewer or manufacturer, and in the case of sales by dealers other than retail dealers, of the names and business addresses of the purchasers.

The commissioner shall cause a record to be kept of all expenses incurred in the collection of such data.

SOURCES: Codes, 1942, § 10221; Laws, 1934, ch. 171.

Cross References — List of dealers to be kept by breweries, see § 27-71-501.

§ 67-3-65. Powers of local governments.

Municipalities may enforce such proper rules and regulations for fixing zones and territories, prescribing hours of opening and of closing, and for such other measures as will promote public health, morals, and safety, as they may by ordinance provide. The board of supervisors of any county may make such rules and regulations as to territory outside of municipalities as are herein provided for municipalities.

Nothing in this chapter shall prohibit the governing body of any municipality from designating what territory surrounding churches and schools in said municipalities, and the board of supervisors of any county from designating what territory surrounding churches and schools outside of any municipality, in which light wines and beer shall not be sold or consumed.

SOURCES: Codes, 1942, §§ 10224, 10228; Laws, 1934, ch. 171.

Cross References — Standard state zoning law, see § 17-1-3.
Municipal option election to permit the sale of beer, see § 67-3-9.

JUDICIAL DECISIONS

1. Construction.
2. Powers of local governments.
3. Actions of local governments.
4. Appeals.
5. Miscellaneous.

1. Construction.

Code 1942, § 10223(a), when read in conjunction with Code 1942, § 10224, as a whole, and one section in context with the other, merely makes for the conclusion that though Code 1942, § 10224 refers to the authority of municipalities to prescribe hours opening or closing of businesses selling light wines and beer, those hours prescribed by the municipality must come within the limits of the hours established by state law. Watkins v. Navarrette, 227 So. 2d 853 (Miss. 1969).

A licensee has no vested property right in a license to sell beer and light wines, which is simply a revocable permit or alienable privilege, with reference to a business which has long been recognized as peculiarly affecting the public interest and subject to governmental regulations. Miller v. Board of Supvrs., 230 Miss. 849, 94 So. 2d 604 (1957).

Provision of statute relating to regulation of sale of wine and beer by municipalities and boards of supervisors outside of municipalities that nothing in statute shall prohibit the designation of the territory surrounding churches and schools in which such beverages shall not be sold or consumed, did not limit power to prohibit to territory surrounding churches and schools. Alexander v. Graves, 178 Miss. 583, 173 So. 417 (1937).

Statute relating to sale of wine and beer which provided that municipalities and boards of supervisors of territory lying outside of municipalities may enforce regulations "for fixing zones and territories" and for prescribing hours of opening and closing and such other measures as will promote public health, morals, and safety held to confer upon municipalities and on boards of supervisors in such territory the power to fix zones in which sale might be conducted and other zones in which sale might be prohibited, "zone" connoting within itself a fixed territory. Alexander v. Graves, 178 Miss. 583, 173 So. 417 (1937).

Powers conferred on municipalities and boards of supervisors of territory lying outside municipalities with regard to regulating sale of wine and beer must be based on reasonable conditions, that is, some basis of fact ascertained by board of supervisors which would have a material bearing on whether sale should be by a resident of the state for a period of two years. Alexander v. Graves, 178 Miss. 583, 173 So. 417 (1937).

2. Powers of local governments.

A municipal ordinance which made it a misdemeanor for any permit holder to allow persons under 21 years of age to enter on-premises retailers even if such persons were accompanied by parents, guardians, or under proper supervision was properly adopted under § 67-3-65 and was not invalid on the basis of its conflict with § 67-3-53. Collins v. City of Hazlehurst, 709 So. 2d 408 (Miss. 1997), cert. denied, 524 U.S. 904, 118 S. Ct. 2061, 141 L. Ed. 2d 138 (1998).

Pursuant to § 67-3-65, a city was authorized to enact ordinances regulating light wine and beer on adult entertainment premises without showing any secondary effects or showing that such establishments were conducive to criminal behavior; accordingly, any artistic or communicative value that might attach to topless dancing was overridden by the city's exercise of its broad powers arising under the Twenty-First Amendment, and the city's prohibition of light wine and beer in a lounge featuring topless dancing was constitutionally permissible. Steverson v. City of Vicksburg, 900 F. Supp. 1 (S.D. Miss. 1994).

Conditions arising largely from the coming into the county to purchase wine and beer, of persons from other counties in which such sale was not permitted, warrant the zoning against such sale of a half mile strip bordering such other counties. Herbert v. Board of Supvrs., 241 Miss. 223, 130 So. 2d 250 (1961).

Notice and hearing are not required before the making of a zoning order. Herbert v. Board of Supvrs., 241 Miss. 223, 130 So. 2d 250 (1961).

It was not necessary for the board of supervisors to give notice and have a hearing prior to the making of an order prohibiting the sale of beer and light wines in a described area of two heavily populated unincorporated communities, which were without adequate police protection. Miller v. Board of Supvrs., 230 Miss. 849, 94 So. 2d 604 (1957).

This section and Code 1942, § 10228, vest in board of supervisors a wide discretion in determining the reasonableness of an order prohibiting or restricting the sale of beer within a named territory. Miller v. Board of Supvrs., 230 Miss. 849, 94 So. 2d 604 (1957).

Order of board of supervisors prohibiting sale of beer or wine between 9 p.m. and 7 a.m. and all day on Sunday, outside of the municipalities of county, passed without petition therefor and without hearing or notice to interested parties, is within the power of the board and does not violate any constitutional right of any of the complaining parties, since order does not prohibit places from being open for any other lawful purpose. Board of Supvrs. v. McCormick, 207 Miss. 216, 42 So. 2d 177 (1949).

3. Actions of local governments.

Zoning ordinance prohibiting sale of beer within 500 feet of public school constitutes valid and reasonable exercise of police power of city because only minimal showing of rationality is necessary to enable liquor zoning ordinance to withstand constitutional attack. Davidson v. City of Clinton, 826 F.2d 1430 (5th Cir. 1987).

Defendant was properly enjoined from engaging in the sale of beer in violation of an order of the board of supervisors zoning a certain area of the county against the sale of beer, notwithstanding his contention that the board's order, having been adopted and entered without notice and without a hearing to the complaining parties, was invalid and beyond the power of the board, and that there was no proof to justify the issuance of the injunction against the defendant. Pace v. State, 231 Miss. 144, 94 So. 2d 798 (1957).

An order of the board of supervisors made without any public hearing or notice, prohibiting the sale of beer and light wines within a described area of two heavily populated, unincorporated communities, which were without adequate police protection, and located only a few miles from a city, after being advised by the sheriff that such action was necessary in interest of adequate law enforcement, was not unreasonable, arbitrary or capricious. Miller v. Board of Supvrs., 230 Miss. 849, 94 So. 2d 604 (1957).

An order of a board of supervisors prohibiting the sale of light beer and wine from an entire school district in which there had been no election on the question, where it was shown that the place of business of the only authorized beer dealer in the district was one-half mile from the nearest residence and one and one-half miles from the school and the nearest church, and that school children did not pass the place going to or from schools, was unreasonable, and was beyond the power of the board. Green v. Alcorn County, 192 Miss. 468, 6 So. 2d 130 (1942).

Where a board of supervisors adopted an order prohibiting the sale of light beer and wine from an entire school district, rather than an order based upon reasonable grounds prohibiting such sale merely within a limited area adjacent to a church or school, specifying the distance, the order was reversed. Green v. Alcorn County, 192 Miss. 468, 6 So. 2d 130 (1942).

An order by the board of county supervisors, issued pursuant to the powers conferred by this section, prohibiting the sale of beer and wine within fifteen hundred feet of any school or church in certain territory in an unincorporated village containing two hundred and four inhabitants, was reasonable. Ford v. Easterling, 183 Miss. 575, 184 So. 153, 119 A.L.R. 634 (1938).

Finding of board of supervisors that property within zone in which sale of wine and beer was prohibited was a residential section and that it would promote public health, morals, and safety to have sale prohibited within such territory was binding on reviewing court where petition for prohibition to restrain enforcement of ordinance did not set forth specific facts but merely general conclusions. Alexander v. Graves, 178 Miss. 583, 173 So. 417 (1937).

4. Appeals.

Since the passage of an order prohibiting the sale of beer prescribing the areas within which it might be sold is a legislative action of the board of supervisors under powers delegated to it by statute, on appeal therefrom the question is whether the board's decision is supported by substantial evidence, or is arbitrary or capricious, or beyond the power of the board to make, or whether it violates any constitutional right of the complaining party. Miller v. Board of Supvrs., 230 Miss. 849, 94 So. 2d 604 (1957).

Board of supervisors in enforcing rules and regulations for prescribing hours of opening and closing under the provisions of this section exercises a legislative and not a judicial power but appeals from their decisions are nonetheless within the contemplation of Code 1942, § 1195. Board of Supvrs. v. McCormick, 207 Miss. 216, 42 So. 2d 177 (1949).

Writ of prohibition to restrain board of supervisors and sheriff from enforcing against petitioners order of board forbidding sale of beer during certain hours, adopted pursuant to this section, was properly denied, since the writ was not sought to restrain either the board or the sheriff from any judicial action. Holmes v. Board of Supvrs., 199 Miss. 363, 24 So. 2d 867 (1946).

While it is true that the courts will not interfere with boards of supervisors in the lawful exercise of the jurisdiction committed to them by law on the sole grounds that their actions are characterized by lack of wisdom or sound discretion, it is the duty of the court to review an order prohibiting the sale of light beer and wine from an entire school district for the purpose of determining whether it has any substantial support under the facts disclosed as a reasonable exercise of the powers delegated to the boards by the legislature. Green v. Alcorn County, 192 Miss. 468, 6 So. 2d 130 (1942).

Walters v. Board of Supvrs., 184 So. 160 (Miss. 1938).

5. Miscellaneous.

Licensed person selling beer held not entitled to restrain enforcement of ordinance adopted by board of supervisors finding the district in which such person sold beer was a residential district and prohibiting sale of beer therein. Alexander v. Graves, 178 Miss. 583, 173 So. 417 (1937).

ATTORNEY GENERAL OPINIONS

Determination of boundaries of territories in which the sale of beer will be prohibited in the vicinity of schools and churches lies within the discretion of governing authorities, as long as the ordinances are reasonable under statute. Younger, Feb. 5, 1992, A.G. Op. #92-0008.

County Board of Supervisors may by ordinance prohibit consumption of alcoholic beverages, beer and wine on property owned by United States in county and on which concurrent jurisdiction has been reserved to state or granted by United States. Gore Oct. 6, 1993, A.G. Op. #93-0730.

A local "open container" ordinance prohibiting the possession of open containers of beer or light wine while operating a motor vehicle would be allowed by section 67-3-65. Bradley, September 13, 1995, A.G. Op. #95-0585.

An ordinance prohibiting or regulating the sale of beer and light wines on Sundays falls within the authority of a municipality to regulate hours of opening and closing pursuant to the statute; further, an ordinance which could be reasonably interpreted to provide hours on Sunday within which establishments holding permits for the sale of beer are "closed" for the sale of beer and light wines but open for other lawful purposes would also be allowed. Stark, August 28, 1998, A.G. Op. #98-0484.

An ordinance regulating the hours of sale of beer and light wines falls within the authority of a municipality to regulate hours of opening and closing pursuant to this section; however, any specific hours prescribed by the municipality for the sale of such beverages must come within the limits of § 67-3-53. Tyner, March 5, 1999, A.G. Op. #99-0074.

An ordinance regulating or prohibiting the possession of open containers of beer or light wine by an individual while operating or riding in a motor vehicle, or while on public property, including municipally-owned buildings or property, would be within the authority of a municipality. Phillips, July 2, 1999, A.G. Op. #99-0264.

A municipal ordinance may regulate or prohibit the possession of unopened containers of beer and wine within city parks, auditoriums or coliseums. Phillips, July 2, 1999, A.G. Op. #99-0264.

A municipal ordinance may not prohibit the possession of lawfully purchased beer or light wine by an individual on private property. Phillips, July 2, 1999, A.G. Op. #99-0264.

Whether adoption of an ordinance limiting sales of beer and light wines for on-premises consumption to establishments that serve a certain ratio of meals is a valid exercise of the municipality's power under Section 67-3-65 is a determination for a court of competent jurisdiction. Kirk, Nov. 8, 2002, A.G. Op. #02-0644.

A county board of supervisors may place the issue of Sunday sales of beer and light wines before the electorate by means of a non-binding referendum. Hemphill, Apr. 4, 2003, A.G. Op. 03-0061.

Even though a business selling alcohol located inside a municipality is within the proscribed distance from a church as set out in a county ordinance, the ordinance is not enforceable against such business. Howard, Feb. 17, 2006, A.G. Op. 06-0039.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 18.

CJS. 48 C.J.S., Intoxicating Liquors §§ 52 et seq.

§ 67-3-67. Transportation of light wines and beer not to be interfered with.

No county or any officer or agent thereof, nor any other officer, agent, or person, shall interfere with or impede the passage through such county of any light wine or beer moving in accordance with the provisions of this chapter and the provisions of Section 67-9-1 and which in transit to or from any county of this state wherein the traffic in light wines and beer is not prohibited, any county prohibition of such traffic to the contrary notwithstanding.

SOURCES: Codes, 1942, § 10225; Laws, 1934, ch. 171; Laws, 1996, ch. 417, § 12, eff from and after July 1, 1996.

Cross References — Rule making it unlawful to transport beer on which the tax has not been paid, see § 27-71-317.

JUDICIAL DECISIONS

1. In general.

Although replevin was not the proper action to secure possession from the sheriff of a truckload of beer confiscated while being transported through a "dry" county, where the plaintiff's declaration filed in the action was in sufficient detail to constitute a claim for the beer, he was entitled to a hearing on the merits. Mississippi State Hwy. Comm'n v. Ulmer, 186 So. 2d 460 (Miss. 1966).

§ 67-3-69. Penalty.

(1) Except as to Sections 67-3-17, 67-3-23, 67-3-27, 67-3-55 and 67-3-57, any violation of any provision of this chapter or of any rule or regulation of the commissioner, shall be a misdemeanor and, where the punishment therefor is not elsewhere prescribed in this section, shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or imprisonment for not more than six (6) months, or both, in the discretion of the court. If any person so convicted shall be the holder of any permit or license issued by the commissioner under authority of this chapter, the permit or license shall from and after the date of such conviction be void and the holder thereof shall not thereafter, for a period of one (1) year from the date of such conviction, be entitled to any permit or license for any purpose authorized by this chapter. Upon conviction of the holder of any permit or license, the appropriate law enforcement officer shall seize the permit or license and transmit it to the commissioner.

(2)(a) Any person who shall violate any provision of Section 67-3-17, 67-3-23, 67-3-27 or 67-3-55 shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court.

(b) Any person who shall violate any provision of Section 67-3-57 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than one (1) year, or by both, in the discretion of the court. Any person convicted of violating any provision of the sections referred to in this subsection shall forfeit his permit, and shall not thereafter be permitted to engage in any business taxable under the provisions of Sections 27-71-301 through 27-71-347.

(3) If the holder of a permit, or the employee of the holder of a permit, shall be convicted of selling any beer or wine to anyone who is visibly intoxicated from the licensed premises or to any person under the age of twenty-one (21) years from the licensed premises in violation of Section 67-3-53(b), then, in addition to any other penalty provided for by law, the commissioner may impose the following penalties against the holder of a permit:

(a) For the first offense on the licensed premises, by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars

($1,000.00) and/or suspension of the permit for not more than three (3) months.

(b) For a second offense occurring on the licensed premises within twelve (12) months of the first offense, by a fine of not less than Five Hundred Dollars ($500.00) nor more than Two Thousand Dollars ($2,000.00) and/or suspension of the permit for not more than six (6) months.

(c) For a third offense occurring on the licensed premises within twelve (12) months of the first, by a fine of not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00) and/or suspension or revocation of the permit to sell beer or light wine.

(d) For a fourth or subsequent offense occurring on the licensed premises within twelve (12) months of the first, by a fine of not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00) and/or suspension or revocation of the permit to sell beer or light wine.

(4) A person who sells any beer or wine to a person under the age of twenty-one (21) years shall not be guilty of a violation of Section 67-3-53(b) if the person under the age of twenty-one (21) years represents himself to be twenty-one (21) years of age or older by displaying an apparently valid Mississippi driver's license containing a physical description consistent with his appearance or by displaying some other apparently valid identification document containing a picture and physical description consistent with his appearance for the purpose of inducing the person to sell beer or wine to him.

(5) If the holder of a permit to operate a brewpub is convicted of violating the provisions of Section 67-3-22(3), then, in addition to any other provision provided for by law, the holder of the permit shall be punished as follows:

(a) For the first offense, the holder of a permit to operate a brewpub may be fined in an amount not to exceed Five Hundred Dollars ($500.00).

(b) For a second offense occurring within twelve (12) months of the first offense, the holder of a permit to operate a brewpub may be fined an amount not to exceed One Thousand Dollars ($1,000.00).

(c) For a third or subsequent offense occurring within twelve (12) months of the first offense, the holder of a permit to operate a brewpub may be fined an amount not to exceed Five Thousand Dollars ($5,000.00) and the permit to operate a brewpub shall be suspended for thirty (30) days.

SOURCES: Codes, 1942, §§ 10226, 10264; Laws, 1934, chs. 127, 171; Laws, 1985, ch 431, § 2; Laws, 1997, ch. 499, § 12; Laws, 1998, ch. 308, § 13; Laws, 2000, ch. 435, § 11; Laws, 2005, ch. 462, § 5, eff from and after passage (approved Mar. 29, 2005.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in (5). The reference to "Section 14(3) of Senate Bill No. 2826, 1998 Regular Session" was changed to "Section 67-3-22(3)". The Joint Committee ratified the correction at its April 28, 1999 meeting.

Cross References — Taxation of light wines and beer, see §§ 27-71-301 et seq.
License applicant's oath not to violate alcohol control laws, see § 67-3-17.

Issuance, transfer and display of permits, see § 67-3-23.

Application for license, see § 67-3-27.

Sale to under-age customer, see § 67-3-53.

Exemption for persons over age of 18 with parental consent, or who are military personnel, or who are employees of establishments licensed to sell light wine or beer, see § 67-3-54.

Possession for sale of light wine or beer not acquired from licensed wholesaler or distributor, see § 67-3-55.

Possession or sale of untaxed light wine or beer, see § 67-3-57.

Penalties for purchase of light wine or beer by person under age of 21, see § 67-3-70.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

In a suit against a bar for furnishing alcohol to a minor who later caused an auto accident, the trial court erred by directing a verdict for the bar, as the evidence created a fact question as to whether the bar knew or should have known that the buyer of drinks (who presented a false Mississippi driver's license showing he was 21) was giving them to minors. Moore v. K&J Enters., 856 So. 2d 621 (Miss. Ct. App. 2003), cert. dismissed, 2004 Miss. LEXIS 198 (Miss. 2004).

Where a statute making it unlawful to sell beer was repealed by statute which authorized sale within the state and permitted counties to prohibit such sales, and where a majority of qualified electors in county determined that the sale of beer should not be permitted within the county, such a sale of beer thereafter was prohibited and punishable as violation of chapter relating to wine and beer. Hays v. State, 219 Miss. 808, 69 So. 2d 845 (1954).

In beer election case, if judgment is affirmed, all offenses against law during time appeal was pending are punishable as if no appeal had been taken, regardless of supersedeas. Early v. Board of Supvrs., 182 Miss. 636, 181 So. 132 (1938).

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

Law Reviews. Commercial alcohol vendor liability in Mississippi: Is the party over? 59 Miss. L. J. 209, Spring, 1989.

§ 67-3-70. Purchase of light wine or beer by person under age of 21; penalties; expungement of conviction.

(1) Except as otherwise provided by Section 67-3-54, any person under the age of twenty-one (21) years who purchases or possesses any light wine or beer shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00) and a sentence to not more than thirty (30) days community service.

(2) Any person under the age of twenty-one (21) years who falsely states he is twenty-one (21) years of age or older or presents any document that indicates he is twenty-one (21) years of age or older for the purpose of

purchasing or possessing any light wine or beer shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00) and a sentence to not more than thirty (30) days community service.

(3) Except as otherwise provided by Section 67-3-54, any person who knowingly purchases light wine or beer for, or gives light wine or beer to a person under the age of twenty-one (21) years, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00) and a sentence to not more than thirty (30) days community service. The punishment provided under this subsection shall not be applicable to violations of Section 97-5-49.

(4) The term "community service" as used in this section shall mean work, projects or services for the benefit of the community assigned, supervised and recorded by appropriate public officials.

(5) If a person under the age of twenty-one (21) years is convicted or enters a plea of guilty of violating subsection (1) or subsection (2) of this section, the trial judge, in lieu of the penalties otherwise provided under this section, shall suspend the minor's driver's license by taking and keeping it in the custody of the court for a period of time not to exceed ninety (90) days. The judge so ordering the suspension shall enter upon his docket "DEFENDANT'S DRIVER'S LICENSE SUSPENDED FOR ______ DAYS IN LIEU OF CONVICTION" and such action by the trial judge shall not constitute a conviction. During the period that the minor's driver's license is suspended, the trial judge shall suspend the imposition of any fines or penalties that may be imposed under this section and may place the minor on probation subject to such conditions as the judge deems appropriate. If the minor violates any of the conditions of probation, then the trial judge shall return the driver's license to the minor and impose the fines, penalties, or both, that he would have otherwise imposed, and such action shall constitute a conviction.

(6) Any person who has been charged with a violation of subsections (1) or (2) of this section may, not sooner than one (1) year after the dismissal and discharge or completion of any sentence and/or payment of any fine, apply to the court for an order to expunge from all official records all recordation relating to his arrest, trial, finding or plea of guilty, and dismissal and discharge. If the court determines that such person was dismissed and the proceedings against him discharged or that such person had satisfactorily served his sentence and/or paid his fine, it shall enter such order.

SOURCES: Laws, 1985, ch. 431, § 3; Laws 2002, ch. 570, § 5; Laws, 2011, ch. 435, § 2; Laws, 2011, ch 472, § 2, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 2 of ch. 435, Laws of 2011, effective from and after July 1, 2011 (approved March 23, 2011), amended this section. Section 2 of ch. 472, Laws of 2011, effective from and after July 1, 2011 (approved March 30, 2011), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 472, Laws of 2011, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The first 2011 amendment (ch. 435), in (3), deleted "or makes available" preceding "light wine or beer to a person under the age of twenty-one (21)" in the first sentence, and added the last sentence.

The second 2011 amendment (ch. 472), in (3), deleted "or makes available" preceding "light wine or beer to a person under the age of twenty-one (21)" in the first sentence, and added the last sentence; and made minor stylistic changes.

Cross References — Expungement of records of youth court, see §§ 43-21-159, 43-21-265.

Transfer of cases to youth court, see § 43-21-159.

Sale to underaged customer, see § 67-3-53.

Exemption from prohibition of possession of light wine or beer by certain persons less than 21 years of age, see § 67-3-54.

Penalty for sales to underaged customers, see § 67-3-69.

Knowingly allowing party at residence or premises if minor at party obtains, possesses or consumes alcoholic beverage prohibited, see § 97-5-49.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

In order to establish liability by proving negligence on the part of a licensee, the plaintiff must prove, in addition to negligence per se (that the licensee violated Miss. Code Ann. § 67-3-70 (Rev. 2001) by furnishing alcohol to a minor), that it was foreseeable that the minor to whom the alcohol was furnished would negligently cause injury to the plaintiff. Moore v. K&J Enters., 856 So. 2d 621 (Miss. Ct. App. 2003), cert. dismissed, 2004 Miss. LEXIS 198 (Miss. 2004).

Records of criminal offenses are kept pursuant to § 45-27-1. The legislature of Mississippi has specifically authorized expungement of criminal offender records in limited cases-youth court cases, §§ 43-21-159 and 43-21-265; first offense misdemeanor convictions occurring prior to age 23, § 99-19-71; drug possession convictions occurring prior to age 26, § 41-29-150; purchase of alcoholic beverages by one under age 21, § 67-3-70; and municipal court convictions, § 21-23-7. Expungement of felony convictions which arose pursuant to guilty pleas are governed by § 99-15-57 which provides that any person who pled guilty within 6 months prior to the effective date of § 99-15-26 may apply to the court for an order expunging his or her criminal records. Under §§ 99-15-57 and 99-15-26 a circuit court has the power to expunge a felony conviction pursuant to a guilty plea under certain conditions. Accordingly, a petitioner who pled guilty to the felony of burglary might have been eligible for relief pursuant to §§ 99-15-57 and 99-15-26 if his guilty plea had occurred on or after October 1, 1982, that being the earliest date to satisfy the "within 6 months prior to" March 31, 1983, requirement of § 99-15-57. However, the petitioner pleaded guilty to burglary on October 9, 1979, 3 years prior to October 1, 1982, and admitted that he did not fall within the criterion in any of the statutes authorizing expungement, and thus the trial court did not err in denying his petition for expungement. Caldwell v. State, 564 So. 2d 1371 (Miss. 1990).

ATTORNEY GENERAL OPINIONS

Mississippi Justice Information Center is not prohibited from entering the following crimes committed by individuals under 18 years of age into its database: (1) crimes punishable under state or federal law by life imprisonment or death; (2)

offenses committed by a child on or after his seventeenth birthday where such offenses would be a felony if committed by an adult; (3) a hunting or fishing violation; (4) a traffic violation; (5) a violation of the Mississippi Implied Consent Law; or (6) a violation of Section 67-3-70. Spann, Jan. 24, 2000, A.G. Op. #99-0694.

Since possession of alcohol or light wine or beer by a minor is not a delinquent act, the youth court does not have original jurisdiction over such offenses. Wiggins, Sept. 19, 2003, A.G. Op. 03-0424.

RESEARCH REFERENCES

ALR. Criminal offense of selling liquor to a minor or permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age. 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift. 14 A.L.R.3d 1186.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 A.L.R.3d 551.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor. 89 A.L.R.3d 1256.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 220 et seq.

1 Am. Jur. Proof of Facts 315, Proof of age.

CJS. 48 C.J.S. Intoxicating Liquor §§ 345-350, 460.

§ 67-3-71. Repealed.

Repealed by Laws of 1979, ch. 365, eff from and after July 1, 1979.

[Codes, Hutchison's 1848, ch. 11, art. 2(18); 1857, ch. 20, art. 13; 1871, § 2464; 1880, § 1108; 1892, § 1589; 1906, § 1743; Hemingway's 1917, § 2085; 1930, § 1973; 1942, § 2612; Laws, 1908, ch. 115]

Editor's Note — Former § 67-3-71 provided that a debt for liquors was not collectible.

§ 67-3-73. Immunity from liability of persons who lawfully furnished or sold intoxicating beverages to one causing damage.

(1) The Mississippi Legislature finds and declares that the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.

(2) Notwithstanding any other law to the contrary, no holder of an alcoholic beverage, beer or light wine permit, or any agent or employee of such holder, who lawfully sells or serves intoxicating beverages to a person who may lawfully purchase such intoxicating beverages, shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off the licensed premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served.

(3) Notwithstanding any other law to the contrary, no social host who serves or furnishes any intoxicating beverage to a person who may lawfully

consume such intoxicating beverage shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off such social host's premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were served or furnished. No social host who owns, leases or otherwise lawfully occupies a premises on which, in his absence and without his consent, intoxicating beverages are consumed by a person who may lawfully consume such intoxicating beverage shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person who consumed the intoxicating beverages.

(4) The limitation of liability provided by this section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol, or to any holder of an alcoholic beverage, beer or light wine permit, or any agent or employee of such holder when it is shown that the person making a purchase of an alcoholic beverage was at the time of such purchase visibly intoxicated.

SOURCES: Laws, 1987, ch. 451, eff from and after April 3, 1987 (became law without Governor's signature on April 3, 1987).

Cross References — Prohibition against sale of liquor to persons visibly intoxicated, as well as to certain other persons, see § 67-1-83.

JUDICIAL DECISIONS

1. Evidence.
1.5. Liability.
2. No liability.
3. No exemption for distinction based on "making a purchase".
4. Construction.

1. Evidence.

Where plaintiff sued a casino and a bar for wrongful death pursuant to Mississippi's Dram Shop Act, Miss. Code Ann. § 67-3-73, expert testimony that the driver who killed decedent was visibly intoxicated when he was served alcohol precluded the entry of summary judgment for defendants under Miss. R. Civ. P. 56. Expert's testimony was based on Intoxilyzer results taken an hour after the accident indicating that the driver's BAC was 0.088% and a blood sample indicating a BAC of 0.07%. Treasure Bay Corp. v. Ricard, 967 So. 2d 1235 (Miss. 2007).

Casino offered assistance to the adult invitee who had been drinking for hours and the record reflected that she was attended by casino staff after she fell to the floor. A casino staff member suggested that she seek the attention of a physician and further offered to summon an ambulance, however the adult invitee refused that suggestion as well; thus, the casino did not breach a duty of care, and in any event, where the record showed the invitee became voluntarily intoxicated (she later died at home as a result of aspirating on her own vomit), she was not a member of the class protected by Miss. Code. Ann. § 67-3-73 and summary judgment for the casino was proper. Estate of White v. Rainbow Casino-Vicksburg P'ship, 910 So. 2d 713 (Miss. Ct. App. 2005).

In an action against a retail business that sold beer to a visibly intoxicated driver about two hours before an accident which killed a five year old child, the defendant was not entitled to summary judgment on the basis of an affidavit by the driver that she did not drink the alcoholic beverages purchased from it on the day of the accident and an affidavit by the driver's boyfriend and future husband which corroborated that statement where

(1) the driver had reason to lie, given her pending criminal trial arising from the same accident, (2) the credibility of the driver's boyfriend and future husband was suspect given his relationship to the driver, and (3) the plaintiff presented circumstantial evidence that the driver's level of intoxication increased throughout the day, that she must have consumed a large volume of alcohol to have been as visibly drunk as she was by the time of the accident, and that such volume must have consisted in significant part of some beer purchased from the defendant. Thomas v. Great Atl. & Pac. Tea Co., 233 F.3d 326 (5th Cir. 2000).

1.5. Liability.

Under Mississippi's Dram Shop Act, Miss. Code Ann. § 67-3-73(4) (2005), which required proof that a customer was served alcohol when he was visibly intoxicated, a casino was liable for damages from the customer's car accident as the expert of the wrongful-death heirs testified that the driver's blood alcohol content was high enough that trained personnel should have spotted the driver's intoxication. However, under Miss. Code Ann. § 85-5-7(3), which was in effect when the suit was filed, joint and several liability was limited to fifty percent of recoverable damages. Robinson Prop. Group, Ltd. P'ship v. McCalman, 51 So. 3d 946 (Miss. 2011).

2. No liability.

Casino patron's claim of negligence per se in connection with injuries she allegedly sustained when a cocktail waitress dropped a tray of drinks on or near the patron, while attempting to serve another customer, failed because there was no evidence that the casino violated Mississippi's dram shop act, Miss Code Ann. § 67-3-73, where there was nothing to show that the customer was visibly intoxicated. Callender v. Imperial Palace of Miss., LLC, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 71292 (S.D. Miss. Sept. 19, 2008).

Customer who suffered injuries after voluntarily consuming alcohol is not part of the protected class of Miss. Code Ann. § 67-3-73; therefore, a casino's motion to dismiss a negligence action was properly granted since there was no liability under either § 67-3-73 or Miss. Code Ann. § 67-1-83. Bridges v. Park Place Entm't, Inc., 860 So. 2d 811 (Miss. 2003).

3. No exemption for distinction based on "making a purchase".

Legislature does not intend to exempt businesses from liability under Miss. Code Ann. § 67-3-73(4) based on a distinction of "making a purchase" as opposed to "being furnished" alcoholic beverages; therefore, it did not matter that a casino did not directly sell alcohol to a customer, but the casino was still not liable to a customer that was injured after voluntarily drinking alcohol. Bridges v. Park Place Entm't, Inc., 860 So. 2d 811 (Miss. 2003).

4. Construction.

Under the Mississippi Supreme Court's holdings in Bridges v. Park Place Entertainment, 860 So. 2d 811 (Miss. 2003), and Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346 (Miss. 1986), if an "adult" voluntarily consumes intoxicants and subsequently injures himself or herself due to her intoxicated condition, he or she is not a member of the class protected by Miss. Code. Ann. § 67-3-73. In the context of summary judgment, the question becomes whether there exists an issue of fact as to the voluntariness of said person's intoxication; if a genuine issue of material fact exists, summary judgment is improper. Estate of White v. Rainbow Casino-Vicksburg P'ship, 910 So. 2d 713 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

ALR. What statute of limitations applies to action under dramshop or civil damage act. 55 A.L.R.2d 1286.

Right to recover under civil damage or dramshop act for death of intoxicated person. 64 A.L.R.2d 705.

Liability of liquor furnisher under civil damage or dramshop act for injury or death of intoxicated person from wrongful act of a third person. 65 A.L.R.2d 923.

Liability of innkeeper, restaurateur, or tavernkeeper for injury occurring on or about premises to guest or patron by person other than proprietor or his servant. 70 A.L.R.2d 628.

Liability, under dramshop acts, of one who sells or furnishes liquor otherwise than in operation of regularly established liquor business. 8 A.L.R.3d 1412.

Who is, as "owner" of premises on which intoxicating liquor is sold, liable under civil damage or dram shop acts. 18 A.L.R.3d 1323.

Third person's participating in or encouraging drinking as barring him from recovery under civil damage or similar acts. 26 A.L.R.3d 1112.

Intoxicating liquors: right of one liable under Civil Damage Act to contribution or indemnity from intoxicated person, or vice versa. 31 A.L.R.3d 438.

Proof of causation of intoxication as a prerequisite to recovery under Civil Damage Act. 64 A.L.R.3d 882.

Civil Damages Act: liability of one who furnishes liquor to another for consumption by third parties, for injury to or damage caused by consumer. 64 A.L.R.3d 922.

Carrier's liability based on serving intoxicants to passenger. 76 A.L.R.3d 1218.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 A.L.R.3d 551.

Liability of state or municipality in tort action for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment. 95 A.L.R.3d 1243.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another. 97 A.L.R.3d 528.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damage acts. 98 A.L.R.3d 1230.

Choice of law as to liability of liquor seller for injuries caused by intoxicated person. 2 A.L.R.4th 952.

Liability of hotel or motel operator for injury to guest resulting from assault by third party. 28 A.L.R.4th 80.

Tavernkeeper's liability to patron for third person's assault. 43 A.L.R.4th 281.

Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion. 51 A.L.R.4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence. 62 A.L.R.4th 16.

Validity, construction, and effect of statute limiting amount recoverable in dram shop action. 78 A.L.R.4th 542.

Social host's liability for death or injuries incurred by person to whom alcohol was served. 54 A.L.R.5th 313.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 458-520.

3 Am. Jur. Pl & Pr Forms (Rev), Automobiles and Highway Traffic, Form 299.1 (Head-on collision — Intoxicated driver driving in wrong direction — By decedent's representative — Against tavern).

14A Am. Jur. Pl & Pr Forms (Rev), Negligence, Form 78.1 (Complaint, petition, or declaration — By valet — Against social hosts and intoxicated minor driver — For injuries sustained when struck by vehicle at party).

CJS. 48A C.J.S., Intoxicating Liquors § 635, 645, 652, 653.

§ 67-3-74. Enforcement of certain provisions by officers of the division.

(1) In addition to peace officers within their jurisdiction, all enforcement officers of the Alcoholic Beverage Control Division of the Department of Revenue are authorized to enforce the provisions made unlawful by Sections 67-3-13, 67-3-15, 67-3-53, 67-3-57 and 67-3-70; provided, however, that the provisions prohibiting the sale of light wine or beer to persons under the age of twenty-one (21) years shall be enforced by the division as provided for in this section.

(2)(a) The Alcoholic Beverage Control Division shall investigate violations of the laws prohibiting the sale of light wine or beer to persons under the age of twenty-one (21) years upon receipt of a complaint or information from a person stating that they have knowledge of such violation.

(b) Upon receipt of such complaint or information, the Alcoholic Beverage Control Division shall notify the permit holder of the complaint by certified mail to the primary business office of such permit holder or by hand delivery of the complaint or information to the primary business office of such holder, except in cases where the complaint or information is received from any law enforcement officer.

(c) If an enforcement officer of the Alcoholic Beverage Control Division enters the business of the holder of the permit to investigate a complaint and discovers a violation, the agent shall notify the person that committed the violation and the holder of the permit:

(i) Within ten (10) days after such violation, Sundays and holidays excluded, if the business sells light wine or beer for on-premises consumption; and

(ii) Within seventy-two (72) hours after such violation, Sundays and holidays excluded, if the business does not sell light wine or beer for on-premises consumption.

SOURCES: Laws, 2002, ch. 570, § 1; Laws, 2003, ch. 392, § 4; Laws, 2005, ch. 462, § 4; Laws, 2007, ch. 462, § 6; Laws, 2011, ch. 379, § 4, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment substituted "Department of Revenue" for "State Tax Commission" in (1); and deleted former (3) which repealed the section July 1, 2011.

Cross References — Prohibition against possession of light wine and beer in dry counties, see § 67-3-13.

Prohibition against the brewing, manufacture or sale of any beer or light wine without first securing permit and/or license from commissioner, see § 67-3-15.

Additional unlawful acts by holder of a permit authorizing the sale of beer or light wine at retail, see § 67-3-53.

Prohibition against possessing or selling light wine or beer before permit secured or during time of revocation or suspension, see § 67-3-57.

Penalties for purchase of light wine or beer by person under the age of 21, see § 67-3-70.

§ 67-3-75. Repealed.

Repealed by operation of law on July 1, 2000, by Laws, 1998, ch. 520, § 4.

[Laws, 1997, ch. 558, § 1; reenacted and amended, Laws, 1998, ch. 520, § 4, eff from and after July 1, 1998, and shall stand repealed from and after July 1, 2000]

Editor's Note — Former § 67-3-75 was entitled "Enforcement."

Laws, 1998, ch. 520, § 5, provides as follows:

"SECTION 5. Section 5, Chapter 558, Laws of 1997, which repeals, effective July 1, 1998, Sections 67-1-37, 67-3-31, 67-3-37 and 67-3-75, Mississippi Code of 1972, is repealed."

CHAPTER 5

Native Wines

Sec.
67-5-1. Short title.
67-5-3. Legislative declaration of intent.
67-5-5. Definitions; qualification period.
67-5-7. Production and sale of native wine legalized.
67-5-9. Permits for native wineries; registration of native wineries with secretary of state.
67-5-11. Authorized sales by native wineries.
67-5-13. Annual privilege license tax on producers; excise tax on cases sold by producers.
67-5-15. Repealed.

§ 67-5-1. Short title.

This chapter shall be cited as the "Mississippi Native Wine Law of 1976."

SOURCES: Laws, 1976, ch. 467, § 1, eff from and after passage (approved May 25, 1976).

Cross References — Definition and content requirements of "native wine," see § 67-1-5.

Board of Tax Appeals to have jurisdiction over all administrative appeals regarding certain decisions and actions by the Department of Revenue under §§ 67-5-1 et seq., as provided for under § 67-1-72, see § 27-4-3.

JUDICIAL DECISIONS

1. In general.

Since the Native Wine Act (§§ 67-5-1 et seq.) consists of laws relating specifically to one form of alcoholic beverage, it is, as such, special legislation which will prevail over the general statutes dealing with alcohol that are contained in Chapter 1 of Title 67 (67-1-1 et seq). Martin v. State, 501 So. 2d 1124 (Miss. 1987).

§ 67-5-3. Legislative declaration of intent.

The Legislature of the State of Mississippi, recognizes, by the passage of this chapter, the vital contribution of the agricultural industry to the economy of this state, and declares that the intent of this chapter is to enhance and expand such industry by authorizing and encouraging the domestic production of native wines from grapes, berries, fruits, honey and vegetables grown and produced in Mississippi.

The Legislature further recognizes the vital contribution of the tourist industry to the economy of this state, and declares that the intent of this chapter is to enhance such industry by encouraging the planting and development of native vineyards, the construction of native wineries, and the production and sale of native wines so that tourists traveling through Mississippi may visit vineyards, wineries and wine cellars, and purchase Mississippi domestic wines.

The Legislature of the State of Mississippi further recognizes the need for the expansion, diversification and development of Mississippi economy, and declares that the intent of this chapter is to authorize and encourage the introduction of a new industry into this state which will provide new employment opportunities, additional income, and support for existing industries in this state.

SOURCES: Laws, 1976, ch. 467, § 2; Laws, 1991, ch. 444, § 1, eff from and after July 1, 1991.

Cross References — Definition and content requirements of "native wine," see § 67-1-5.

JUDICIAL DECISIONS

1. In general.

Under the provisions of the Native Wine Act (§§ 67-5-1 et seq.), the manufacturer, possession, and sale of native wines are legal throughout the state. Martin v. State, 501 So. 2d 1124 (Miss. 1987).

§ 67-5-5. Definitions; qualification period.

For purposes of this chapter, the following words and phrases shall have the definitions ascribed herein, unless the context otherwise requires:

(a) "Native wine" shall mean any product, produced in Mississippi for sale, having an alcohol content not to exceed twenty-one percent (21%) by weight and made in accordance with revenue laws of the United States, which shall be obtained primarily from the alcoholic fermentation of the juice of ripe grapes, fruits, berries, honey or vegetables grown and produced in Mississippi; provided that bulk, concentrated or fortified wines used for blending may be produced without this state and used in producing native wines. The commission shall adopt and promulgate rules and regulations to permit a producer to import such bulk and/or fortified wines into this state for use in blending with native wines without payment of any excise tax that would otherwise accrue thereon. In order to be classified as "native wine" under the provisions of this chapter, at least fifty-one percent (51%) of the finished product by volume shall have been obtained from fermentation of grapes, fruits, berries, honey or vegetables grown and produced in Mississippi.

(b) "Native winery" shall mean any place or establishment within this state where native wine is produced in whole or in part for sale.

(c) "Produce" shall mean to do or to perform any act or thing in the process of making native wine.

(d) "Person" shall mean one or more natural persons, or a corporation, partnership or association.

(e) "Producer" shall mean any person who owns, operates or conducts a native winery, but it does not mean the employees of such persons.

(f) "Consumer" shall mean any person who purchases native wine for the purpose of consuming it, giving it away, or distributing it in any way other than by sale, barter or exchange.

(g) "Commission" shall mean the Mississippi State Tax Commission.

(h) "Division" shall mean the Alcoholic Beverage Control Division of the State Tax Commission.

SOURCES: Laws, 1976, ch. 467, § 3; Laws, 1977, ch. 488, § 1; Laws, 1991, ch. 444, § 2, eff from and after July 1, 1991.

Cross References — Operation of native winery for qualification period, see § 67-1-5.

Right of native wineries to advertise sale of native wines, see § 67-1-85.

§ 67-5-7. Production and sale of native wine legalized.

Hereafter, it shall be lawful to produce native wine in the State of Mississippi including the production of non-alcoholic native wines and juices to be used for sacramental purposes, and to sell such native wine within or without this state; provided such native wine shall be subject to the gallonage excise tax as levied by Section 67-5-13.

The production of native wine is hereby declared, under the laws of this state, to be a privilege, and as such privilege shall be subject to such permit fees upon the exercise of the privilege as levied by Section 67-5-13.

SOURCES: Laws, 1976, ch. 467, § 4, eff from and after passage (approved May 25, 1976).

Cross References — Annual privilege tax imposed on manufacturers and retailers of native wines, see § 27-71-5.

Excise tax upon cases of native wine, see § 27-71-7.

Amount of bond required of producer of native wine, see § 27-71-21.

Definition and content requirements of "native wine," see § 67-1-5.

Effect of local option for prohibition on holders of native wine producer's and retailer's permits, see § 67-1-13.

Native wine producers' permits and retailers' permits, see § 67-1-51.

Records and reports by native wine producers and transporters of native wine, see § 67-1-73.

§ 67-5-9. Permits for native wineries; registration of native wineries with secretary of state.

(1) Every native winery in the State of Mississippi shall apply for a permit as provided for in Section 67-1-51, Mississippi Code of 1972, and shall be issued said initial and renewal permit by the commission upon meeting the qualifications and requirements presently set forth by law or regulation for permits authorized by said Section 67-1-51.

(2) Every native winery shall register with the Secretary of State, shall show the location and permit number of said winery, shall show the name and address of the producer owning, conducting or operating the winery, shall show the name and address of all local agents and such other pertinent information which may be required by the Secretary of State, and shall appoint an agent for service of process within the State of Mississippi.

SOURCES: Laws, 1976, ch. 467, § 5, eff from and after passage (approved May 25, 1976).

Cross References — Amount of bond required of producer of native wine, see § 27-71-21.

Definition of "native winery," see § 67-1-5.

Effect of local option for prohibition on holders of native wine producer's and retailer's permits, see § 67-1-13.

Records and reports by native wine producers and transporters of native wine, see § 67-1-73.

JUDICIAL DECISIONS

1. In general.

Since the state at trial chose to proceed on the indictment charging the defendant with distilling wine in violation of § 97-3-21, it could not argue for affirmance of his conviction on proof that he did not have a valid permit issued under the Native Wine Act. Martin v. State, 501 So. 2d 1124 (Miss. 1987).

§ 67-5-11. Authorized sales by native wineries.

Within the State of Mississippi, every native winery is authorized to make sales to the commission or to consumers at the location of the native winery or its immediate vicinity. Every native winery is authorized to make sales to any producer, manufacturer, wholesaler, retailer or consumer located outside of the State of Mississippi who are authorized by law to purchase the same.

SOURCES: Laws, 1976, ch. 467, § 6; Laws, 2006, ch. 352, § 1, eff from and after July 1, 2006.

Cross References — Annual privilege tax imposed on manufacturers and retailers of native wines, see § 27-71-5.

Excise tax upon cases of native wine, see § 27-71-7.

Definition of "native winery," see § 67-1-5.

Effect of local option for prohibition on holders of native wine producer's and retailer's permits, see § 67-1-13.

Native wine producers' permits and retailers' permits, see § 67-1-51.

Records and reports by native wine producers and transporters of native wine, see § 67-1-73.

§ 67-5-13. Annual privilege license tax on producers; excise tax on cases sold by producers.

(1) Upon every producer holding a permit for the production of native wine, there is levied and imposed for each location for the privilege of engaging and continuing in this state in the production of native wine an annual privilege license tax in an amount equal to Ten Dollars ($10.00) for each ten thousand (10,000) gallons, or any part thereof, of native wine produced by the winery.

(2) There is levied and assessed an excise tax upon each case of native wine sold by a producer to any source to be collected from the producer in the amount provided for in Section 27-71-7. However, native wine produced in

Mississippi for export and sale without this state and native wine produced in Mississippi and sold to the commission shall not be subject to the excise tax, nor shall the tax accrue or be collected on native wines dispensed, as free samples in quantities of not more than six (6) ounces, in the tasting room of a native winery.

(3) The privilege tax imposed by subsection (1) of this section shall be collected in the same manner as presently provided by law for the collection of other alcoholic beverages. The excise tax imposed by subsection (2) of this section shall be reported monthly by the producer to the commission on all sales made in Mississippi to consumers at the location of the native winery or its immediate vicinity, along with a statement of gallonage produced during that month, and the producer shall remit the tax due and owing with each report. The producer shall also include in the report a statement of gallonage sold and exported for sale outside this state.

(4) All taxes levied by and collected under this section shall be deposited in the General Fund.

SOURCES: Laws, 1976, ch. 467, § 7; Laws, 1985, ch. 322, § 2; Laws, 2006, ch. 352, § 2; Laws, 2006, ch. 508, § 1, eff from and after July 1, 2006.

Joint Legislative Committee Note — Section 2 of ch. 352, Laws, 2006, effective from and after July 1, 2006 (approved March 13, 2006), amended this section. Section 1 of ch. 508, Laws, 2006, effective from and after July 1, 2006 (approved March 29, 2006), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 508, Laws, 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Annual privilege tax imposed on manufacturers and retailers of native wines, see § 27-71-5.

Excise tax upon cases of native wine, see § 27-71-7.

Amount of bond required of producer of native wine, see § 27-71-21.

Native wine producers' permits and retailers' permits, see § 67-1-51.

§ 67-5-15. Repealed.

Repealed by Laws of 2006, ch. 529, § 12 effective from and after passage (approved April 3, 2006.)

[Laws, 1976, ch. 467, § 8, eff from and after passage (approved May 25, 1976).]

Editor's Note — Former § 67-5-15 required producers of native wine to affix a tax stamp to individual bottles or containers of native wine.

CHAPTER 7

Beer Industry Fair Dealing Act

Sec.

67-7-1. Short title.
67-7-3. Purpose.
67-7-5. Definitions.
67-7-7. Prohibited acts; suppliers.
67-7-9. Prohibited acts; wholesalers.
67-7-11. Amendment, modification, cancellation, termination, nonrenewal, or discontinuance of agreements by suppliers.
67-7-12. Successor supplier to become obligated to all terms and conditions of agreements between original supplier and wholesaler in effect on date of succession.
67-7-13. Transfer of business and assignment of rights of wholesalers.
67-7-15. Duty of supplier to compensate wholesaler for conduct resulting in diminished value of business; determination of compensation by arbitration.
67-7-17. Waiver of rights by wholesalers generally; good faith settlement of disputes.
67-7-19. Agreements subject to chapter; applicability of terms and conditions of transferred agreements.
67-7-21. Civil damage actions for violations of chapter; damages and costs recoverable; actions for declaratory and injunctive relief; venue.
67-7-23. Waiver of rights or causes of action.

§ 67-7-1. Short title.

This chapter shall be known and may be cited as the "Beer Industry Fair Dealing Act."

SOURCES: Laws, 1995, ch. 619, § 1, eff from and after passage (approved April 7, 1995).

§ 67-7-3. Purpose.

The legislative purpose of this chapter is to provide a structure for the business relations between a wholesaler and a supplier of light wine or beer. Regulation in this area is considered necessary for the following reasons:

(a) To maintain stability and healthy competition in the light wine and beer industry in this state.

(b) To promote and maintain a sound, stable and viable system of distribution of light wine and beer to the public.

(c) To provide for the private settlement of disputes between wholesalers and suppliers of light wine or beer as an alternative to civil litigation which consumes the time and resources of the parties and the judicial system.

(d) To promote the public health, safety and welfare.

SOURCES: Laws, 1995, ch. 619, § 2, eff from and after passage (approved April 7, 1995).

§ 67-7-5. Definitions.

As used in this chapter, the following words or phrases, or the plural thereof, whenever they appear in this chapter, unless the context clearly requires otherwise, shall have the meaning ascribed to them in this section.

(a) "Agreement" means any agreement between a wholesaler and a supplier, whether oral or written, whereby a wholesaler is granted the right to purchase and sell a brand or brands of light wine or beer sold by a supplier.

(b) "Ancillary business" means a business owned by the wholesaler, by a substantial stockholder of a wholesaler, or by a substantial partner of a wholesaler, the primary business of which is directly related to the transporting, storing or marketing of the brand or brands of light wine or beer of a supplier with whom the wholesaler has an agreement; or a business owned by a wholesaler, a substantial stockholder of a wholesaler.

(c) "Commission" or "department" means the Department of Revenue of the State of Mississippi.

(d) "Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(e) "Designated member" means the spouse, child, grandchild, parent, brother or sister of a deceased individual who owned an interest, including a controlling interest, in a wholesaler, or any person who inherits under the deceased individual's will, or under the laws of intestate succession of this state; or any person who or entity which has otherwise, through a valid testamentary device by the deceased individual, succeeded the deceased individual in the wholesaler's business, or has succeeded to the deceased individual's ownership interest in the wholesaler pursuant to a written contract or instrument which has been previously approved by supplier; "designated member" includes the appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a wholesaler, and it includes the person appointed by a court as the guardian or conservator of the property of an incapacitated individual owning an ownership interest in a wholesaler.

(f) "Establish" means to adjust or regulate, to provide for and uphold.

(g) "Good faith" means honesty in fact and observance of reasonable commercial standards of fair dealing in the trade, as defined in and interpreted under the Uniform Commercial Code.

(h) "Reasonable qualifications" means the standard of the reasonable criteria established and consistently used by the respective supplier for similarly situated wholesalers that entered into, continued or renewed an agreement with the supplier during a period of twenty-four (24) months before the proposed transfer of the wholesaler's business, or for similarly situated wholesalers who have changed managers or designated managers, under the agreement, during a period of twenty-four (24) months before the proposed change in the manager or successor manager of the wholesaler's business.

(i) "Retaliatory action" means the refusal to continue an agreement, or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith.

(j) "Sales territory" means a primary area of sales responsibility for the brand or brands of light wine or beer sold by a supplier as designated by an agreement.

(k) "Substantial stockholder or substantial partner" means a stockholder of or partner in the wholesaler who owns an interest of ten percent (10%) or more of the partnership or of the capital stock of a corporate wholesaler.

(*l*) "Successor" means a person who replaces a supplier with regard to the right to manufacture, sell, distribute or import a brand or brands of light wine or beer.

(m) "Supplier" means a manufacturer or importer of light wine or beer as regulated by the department under Sections 67-3-1 through 67-3-73.

(n) "Transfer of wholesaler's business" means the voluntary sale, assignment or other transfer of ten percent (10%) or more of control of the business or all or substantially all of the assets of the wholesaler, or ten percent (10%) or more of control of the capital stocks of the wholesaler, including without limitation the sale or other transfer of capital stock or assets by merger, consolidation or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the wholesaler.

(o) "Wholesaler" means a wholesaler of light wine or beer as regulated by the department under Sections 67-3-1 through 67-3-73.

(p) "Similarly situated wholesalers" means wholesalers of a supplier that are of a generally comparable size and operate in markets in Mississippi and adjoining states with similar demographic characteristics, including population size, density, distribution and vital statistics, as well as reasonably similar economic and geographic conditions.

(q) "Light wine and/or beer" has the meaning ascribed to such terms in Section 67-3-5.

SOURCES: Laws, 1995, ch. 619, § 3; Laws, 2009, ch. 342, § 2; Laws, 2009, ch. 492, § 137, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 2 of ch. 342, Laws of 2009, effective from and after passage (approved March 16, 2009) amended this section. Section 137 of ch. 492, Laws of 2009, effective July 1, 2010 (approved on April 6, 2009), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see §§ 27-3-1 et seq.

Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

Designation of sales territories for light wine and beer, see § 27-71-349.

§ 67-7-7. Prohibited acts; suppliers.

(1) A supplier shall not do the following:

(a) Fail to provide each wholesaler of the supplier's brand or brands with a written agreement which contains in total the supplier's agreement with each wholesaler, and designates a specific sales territory. Any agreement which is in existence on April 7, 1995 shall be renewed consistent with this chapter, provided that this chapter may be incorporated by reference in the agreement. Nothing contained herein shall prevent a supplier from appointing, one (1) time for a period not to exceed ninety (90) days, a wholesaler to service temporarily a sales territory not designated to another wholesaler, until such time as a wholesaler is appointed by the supplier; and such wholesaler who is designated to service the sales territory during this period of temporary service shall not be in violation of the chapter, and, with respect to the temporary service territory, shall not have any of the rights provided under Sections 67-7-11 and 67-7-15.

(b) Fix, maintain or establish the price at which a wholesaler shall sell any light wine or beer.

(c) Enter into an additional agreement with any other wholesaler for, or to sell to any other wholesaler, the same brand or brands of light wine or beer in the same territory or any portion thereof, or to sell directly to any retailer in this state.

(d) Require any wholesaler to accept delivery of any light wine or beer or other commodity which has not been ordered by the wholesaler, except that a supplier may impose reasonable inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other similarly situated wholesalers who have an agreement with the supplier.

(e) Require any wholesaler to accept delivery of any light wine or beer or other commodity ordered by a wholesaler if the order was properly cancelled by the wholesaler in accordance with the supplier's procedure.

(f) Require any wholesaler to do any illegal act or to violate any law or regulation by threatening to amend, modify, cancel, terminate or refuse to renew any agreement existing between the supplier and wholesaler.

(g) Require a wholesaler to assent to any condition, stipulation or provision limiting the wholesaler's right to sell the brand or brands of light wine or beer of any other supplier unless the acquisition of the brand or brands of another supplier would materially impair or adversely affect the wholesaler's quality of service, sales or ability to compete effectively in representing the brand or brands of the supplier presently being sold by the wholesaler, except that in any action challenging a supplier's position, the supplier shall have the burden of providing that such acquisition of such other brand or brands would have such effect.

(h) Require a wholesaler to purchase one or more brands of light wine or beer products in order for the wholesaler to purchase another brand or brands of light wine or beer for any reason, except that a wholesaler that has agreed to distribute a brand or brands before April 7, 1995 shall continue to distribute the brand or brands in conformance with this chapter.

(i) Require a wholesaler to submit audited profit and loss statements, balance sheets or financial records as a condition of renewal or continuation of an agreement, except that a supplier may require reasonable proof of a wholesaler's financial condition prior to extending credit terms to a wholesaler.

(j) Withhold delivery of light wine or beer ordered by wholesaler, or change a wholesaler's quota of a brand or brands if the withholding or change is not made in good faith.

(k) Require a wholesaler by any means directly to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a supplier.

(*l*) Take any retaliatory action against a wholesaler that files a complaint in good faith regarding an alleged violation by the supplier of federal, state or local law or an administrative rule as a result of that complaint.

(m) Require or prohibit any change in the manager or successor manager of any wholesaler who has been approved by the supplier as of or after April 7, 1995 unless the supplier acts in good faith. Should a wholesaler change an approved manager or successor manager, a supplier shall not require or prohibit the change unless the person selected by the wholesaler fails to meet the nondiscriminatory, material and reasonable standards and qualifications for managers consistently applied to similarly situated wholesalers by the supplier, except that, in any action challenging a supplier's decision, the supplier shall have the burden of proving that such person fails to meet such standards and qualifications.

(n) Upon written notice of intent to transfer the wholesaler's business, interfere with, prevent or unreasonably delay (not to exceed thirty (30) days) the transfer of the wholesaler's business if the proposed transferee is a designated member.

(o) Upon written notice of intent to transfer the wholesaler's business other than to a designated member, withhold consent to or approval of, or unreasonably delay (not to exceed thirty (30) days after receipt of all material information reasonably requested) a response to a request by the wholesaler for any transfer of a wholesaler's business if the proposed transferee meets the nondiscriminatory material and reasonable qualifications and standards required by the supplier for similarly situated wholesalers.

(p) Restrict or inhibit the right of free association among wholesalers for any lawful purpose.

(q) Threaten to cancel or withhold credit, or to reduce the time period normally given the wholesaler to make payment on a delivery from the supplier as a means of compelling the wholesaler to meet certain standards of performance in any area of business not directly related to credit.

SOURCES: Laws, 1995, ch. 619, § 4, eff from and after passage (approved April 7, 1995).

Editor's Note — This section was enacted with a subsection (1), but no subsection (2).

Cross References — Designation of sales territories for light wine and beer, see § 27-71-349.

ATTORNEY GENERAL OPINIONS

Section 67-7-7 authorizes a county to recover its costs for dismantling and removing a damaged and abandoned manufactured home from a public roadway by filing suit against the owner in justice court. White, Nov. 14, 2005, A.G. Op. 05-0542.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 94, 209.

CJS. 48 C.J.S., Intoxicating Liquors § 297, 298.

§ 67-7-9. Prohibited acts; wholesalers.

A wholesaler shall not do any of the following:

(a) Fail to devote such efforts and resources to the sale and distribution of all the supplier's brands of light wine or beer which the wholesaler has been granted the right to sell or distribute as are required in the wholesaler's agreement with the supplier.

(b) Sell or deliver light wine or beer to a retail licensee located outside the sales territory designated to the wholesaler by the supplier of a particular brand or brands of light wine or beer, except that during periods of temporary service interruptions impacting a particular sales territory, a supplier may appoint another wholesaler to service the sales territory during the period of temporary service interruption. A wholesaler who is designated to service the impacted sales territory during the period of temporary service interruption shall not be in violation of this chapter and shall not have any of the rights provided under Sections 67-7-11 and 67-7-15 with respect to the temporary service territory.

(c) Transfer the wholesaler's business without giving the supplier written notice of intent to transfer the wholesaler's business and, where required by this chapter, receiving the supplier's written approval for the proposed transfer, except that the consent or approval of the supplier shall not be required of any transfer of the wholesaler's business to a designated member, or of any transfer of less than ten percent (10%) of the wholesaler's business unless such transfer results in a change in control. The wholesaler shall give the supplier written notice of any change in ownership of the wholesaler.

SOURCES: Laws, 1995, ch. 619, § 5, eff from and after passage (approved April 7, 1995).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 94.

CJS. 48 C.J.S., Intoxicating Liquors §§ 142 et seq.

§ 67-7-11. Amendment, modification, cancellation, termination, nonrenewal, or discontinuance of agreements by suppliers.

(1) Except as otherwise provided for in this chapter, a supplier shall not amend or modify an agreement; cause a wholesaler to resign from an agreement; or cancel, terminate, fail to renew or refuse to continue under an agreement, unless the supplier has complied with all of the following:

(a) Has satisfied the applicable notice requirements of this section.

(b) Has acted in good faith.

(c) Has good cause for the amendment, modification, cancellation, termination, nonrenewal, discontinuance or forced resignation.

(2) In any action challenging such amendment, modification, termination, cancellation, nonrenewal or discontinuance, the supplier shall have the burden of proving that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the amendment, modification, termination, cancellation, nonrenewal or discontinuance.

(3) Except as otherwise provided in this section, and in addition to the time limits set forth in subsection (4)(d) of this section, the supplier shall furnish written notice of the amendment, modification, termination, cancellation, nonrenewal or discontinuance of an agreement to the wholesaler not less than thirty (30) days before the effective date of the amendment, modification, termination, cancellation, nonrenewal or discontinuance. The notice shall be by certified mail and shall contain all of the following:

(a) A statement of intention to amend, modify, terminate, cancel, nonrenew or discontinue the agreement.

(b) A statement of the reason for the amendment, modification, termination, cancellation, nonrenewal or discontinuance.

(c) The date on which the amendment, modification, termination, cancellation, nonrenewal or discontinuance takes effect.

(4) Good cause shall exist for the purposes of a termination, cancellation, nonrenewal or discontinuance under subsection (1)(c) of this section when all of the following occur:

(a) There is a failure by the wholesaler to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the supplier.

(b) The supplier first acquired knowledge of the failure described in subparagraph (a) not more than twenty-four (24) months before the date notification was given pursuant to subsection (3) of this section.

(c) The wholesaler was given notice by the supplier of failure to comply with this agreement.

(d) The wholesaler has been afforded thirty (30) days in which to submit a plan of corrective action to comply with the agreement and an additional ninety (90) days to cure such noncompliance in accordance with the plan.

(5) Notwithstanding subsections (1) and (3) of this section, a supplier may terminate, cancel, fail to renew or discontinue an agreement immediately upon written notice given in the manner and containing the information required by subsection (3)(a)(b) and (c) of this section if any of the following occur:

(a) Insolvency of the wholesaler, the filing of any petition by or against the wholesaler under any bankruptcy or receivership law or the assignment for the benefit of creditors or dissolution or liquidation of the wholesaler which materially affects the wholesaler's ability to remain in business.

(b) Revocation or suspension of the wholesaler's state or federal license by the appropriate regulatory agency whereby the wholesaler cannot service the wholesaler's sales territory for more than thirty-one (31) days.

(c) The wholesaler, or a partner or an individual who owns ten percent (10%) or more of the partnership or stock of a corporate wholesaler, has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the good will or interest of the wholesaler or supplier. However, an existing stockholder or stockholders, or partner or partners, or a designated member or members, shall have, subject to the provisions of this chapter, the right to purchase the partnership interest or the stock of the offending partner or stockholder prior to the conviction of the offending partner or stockholder, and if the sale is completed prior to conviction the provisions of this subparagraph shall not apply.

(d) There was fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the supplier or its product, except that the supplier shall have the burden of proving fraudulent conduct relating to a material matter on the part of the wholesaler in any legal action challenging such termination.

(e) The wholesaler failed to confine to the designated sales territory its sales of a brand or brands to retailers except that this subsection does not apply if there is a dispute between two (2) or more wholesalers as to the boundaries of the assigned territory, and the boundaries cannot be determined by a reading of the description contained in the agreements between the supplier and the wholesalers.

(f) A wholesaler has failed to pay for light wine or beer ordered and delivered in accordance with established terms and the wholesaler fails to make full payment within five (5) business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier.

(g) A wholesaler intentionally has made a transfer of wholesaler's business, other than a transfer to a designated member without prior written notice to the supplier.

(h) A wholesaler intentionally has made a transfer of wholesaler's business, other than a transfer to a designated member, although the wholesaler has prior to said transfer received from supplier a timely notice of disapproval of said transfer in accordance with this chapter.

(i) The wholesaler intentionally ceases to carry on business with respect to any of supplier's brand or brands previously serviced by wholesaler in its territory designated by the supplier, unless such cessation is due to force majeure or to labor dispute and the wholesaler has made good faith efforts to overcome such events. Provided, however, this shall affect only that brand or brands with respect to which the wholesaler ceased to carry on business.

(6) Notwithstanding subsections (1), (3) and (5) of this section, a supplier may terminate, cancel, not renew or discontinue an agreement upon not less than thirty (30) days prior written notice if the supplier discontinues production or discontinues distribution in this state of all the brands sold by the supplier to the wholesaler, except that nothing in this section shall prohibit a supplier from: (a) upon not less than thirty (30) days notice, discontinuing the distribution of any particular brand or package of light wine or beer; or (b) conducting test marketing of a new brand of light wine or beer which is not currently being sold in this state, except that the supplier has notified the State Tax Commission in writing of its plans to test market, which notice shall describe the market area in which the test shall be conducted; the name or names of the wholesaler or wholesalers who will be selling the light wine or beer; the name or names of the brand of light wine or beer being tested; and the period of time, not to exceed eighteen (18) months, during which the testing will take place.

SOURCES: Laws, 1995, ch. 619, § 6, eff from and after passage (approved April 7, 1995).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 94 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 142 et seq.

§ 67-7-12. Successor supplier to become obligated to all terms and conditions of agreements between original supplier and wholesaler in effect on date of succession.

A successor shall become obligated to all of the terms and conditions of the agreement in effect on the date of succession. This section applies regardless of the character or form of the succession. A successor has the right to contractually require its wholesalers to comply with operational standards of performance if the standards are uniformly established for all the successor's wholesalers and conform to the provisions of this chapter.

SOURCES: Laws, 2009, ch. 342, § 1, eff from and after passage (approved Mar. 16, 2009.)

Cross References — Successor as used in this section defined, see § 67-7-5

§ 67-7-13. Transfer of business and assignment of rights of wholesalers.

(1) Upon written notice of intent to transfer the wholesaler's business, any individual owning or deceased individual who owned an interest in a wholesaler may transfer the wholesaler's business to a designated member, or to any other person who meets the nondiscriminatory material and reasonable qualifications and standards required by the supplier for similarly situated wholesalers. The consent or approval of the supplier shall not be required of any transfer of the wholesaler's business, including the assignment of the wholesaler's rights under the agreement, to a designated member or shall not be withheld or unreasonably delayed to a proposed transferee who meets such nondiscriminatory, material and reasonable qualifications and standards. Such designated member or transferee shall in no event be qualified as a transferee, without the written approval or consent of the supplier, where such proposed transferee shall have been involved in the following:

(a) Insolvency, filing of any voluntary or involuntary petition under any bankruptcy or receivership law, or execution of any assignment for the benefit of creditors; or

(b) Revocation or suspension of a special occupational tax license by the regulatory agency of the United States Government or any state, whereby service was interrupted for more than thirty-one (31) days; or

(c) Conviction of the proposed transferee or any owner thereof of a felony under the United States Code or the laws of any state which reasonably may adversely affect the good will or interest of the wholesaler or supplier; or

(d) Had an agreement involuntarily terminated, cancelled, not renewed or discontinued by a supplier for good cause.

(2) The supplier shall not interfere with, prevent or unreasonably delay the transfer of the wholesaler's business, including an assignment of wholesaler's rights under the agreement, if the proposed transferee is a designated

member, or if the transferee other than a designated member meets such nondiscriminatory, material and reasonable qualifications and standards required by the supplier for similarly situated wholesalers. Where the transferee is other than a designated member, the supplier may in good faith and for good cause related to the reasonable qualifications refuse to accept the transfer of the wholesaler's business or the assignment of the wholesaler's rights under the agreement.

SOURCES: Laws, 1995, ch. 619, § 7, eff from and after passage (approved April 7, 1995).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 94 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 142 et seq.

§ 67-7-15. Duty of supplier to compensate wholesaler for conduct resulting in diminished value of business; determination of compensation by arbitration.

(1) Except as provided for in this chapter, a supplier that has amended, modified, cancelled, terminated or refused to renew any agreement; or caused a wholesaler to resign from an agreement; or has interfered with, prevented or unreasonably delayed, or where required by this chapter, has withheld or unreasonably delayed consent to or approval of, any assignment or transfer of a wholesaler's business, shall pay the wholesaler reasonable compensation for the diminished value of the wholesaler's business, including any ancillary business which has been negatively affected by the act of the supplier. The value of the wholesaler's business or ancillary business shall include, but not be limited to, its good will, except that nothing contained in this chapter shall give rise to a claim against the supplier or wholesaler by any proposed purchaser of wholesaler's business.

(2) Should either party, at any time, determine that mutual agreement on the amount of reasonable compensation cannot be reached, the supplier or the wholesaler may send by certified mail, return receipt requested, written notice to the other party declaring its intention to proceed with arbitration. Arbitration shall proceed only by mutual agreement of both parties.

(3) Not more than ten (10) business days after the notice to enter into arbitration has been delivered, the other party shall send written notice to the requesting party declaring its intention either to proceed or not to proceed with arbitration. Should the other party fail to respond within ten (10) business days, it shall be conclusively presumed that said party shall have agreed to arbitration.

(4) The matter of determining the amount of compensation may, by agreement of the parties, be submitted to a three (3) member arbitration panel consisting of one (1) representative selected by the supplier but unassociated with the affected supplier; one (1) wholesaler representative selected by the wholesaler but unassociated with the wholesaler; and an impartial arbitrator.

(5) Not more than ten (10) business days after mutual agreement of both parties has been reached to arbitrate, each party shall designate, in writing, its one (1) arbitrator representative and the party initiating arbitration shall request, in writing, a list of five (5) arbitrators from the American Arbitration Association or its successor and request that the list be mailed to each party by certified mail, return receipt requested. Not more than ten (10) business days after the receipt of the list of five (5) choices, the wholesaler arbitrator and the supplier arbitrator shall strike and disqualify up to two (2) names each from the list. Should either party fail to respond within the ten (10) business days or should more than one (1) name remain after the strikes, the American Arbitration Association shall make the selection of the impartial arbitrator from the names not stricken from said list.

(6) Not more than thirty (30) days after the final selection of the arbitration panel is made, the arbitration panel shall convene to decide the dispute. The panel shall conclude the arbitration within twenty (20) days after the arbitration panel convenes and shall render a decision by majority vote of the arbitrators within twenty (20) days from the conclusion of the arbitration. The award of the arbitration panel shall be final and binding on the parties as to the amount of compensation for said diminished value.

(7) The cost of the impartial arbitrator, the stenographer and the meeting site shall be equally divided between the wholesaler and the supplier. All other costs shall be paid by the party incurring them.

(8) After both parties have agreed to arbitrate, should either party, except by mutual agreement, fail to abide by the time limitations as prescribed in subsections (3), (5) and (6) of this section, or fail or refuse to make the selection of any arbitrators, or fail to participate in the arbitration hearings, the other party shall make the selection of its arbitrators and proceed to arbitration. The party who has failed or refused to comply as prescribed in this section shall be considered to be in default. Any party considered to be in default pursuant to this subsection shall have waived any and all rights the party would have had in the arbitration and shall be considered to have consented to the determination of the arbitration panel.

SOURCES: Laws, 1995, ch. 619, § 8, eff from and after passage (approved April 7, 1995).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 94 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 142 et seq.

§ 67-7-17. Waiver of rights by wholesalers generally; good faith settlement of disputes.

A wholesaler may not waive any of the rights granted in any provision of this chapter and the provisions of any agreement which would have such an effect shall be null and void. Nothing in this chapter shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

SOURCES: Laws, 1995, ch. 619, § 9, eff from and after passage (approved April 7, 1995).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 94 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 142 et seq.

§ 67-7-19. Agreements subject to chapter; applicability of terms and conditions of transferred agreements.

(1) This chapter shall apply to agreements entered into or renewed after April 7, 1995.

(2) A transferee of a wholesaler that continues in business as a wholesaler shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer, except that a transfer of a wholesaler's business which requires supplier's consent or approval but is disapproved by the supplier shall be null and void.

SOURCES: Laws, 1995, ch. 619, § 10, eff from and after passage (approved April 7, 1995).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 94 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 142 et seq.

§ 67-7-21. Civil damage actions for violations of chapter; damages and costs recoverable; actions for declaratory and injunctive relief; venue.

(1) If a supplier or wholesaler engages in conduct prohibited under this chapter, either party may maintain a civil action against the other to recover actual damages reasonably incurred as the result of the prohibited conduct.

(2) A supplier or wholesaler that violates any provision of this chapter shall be liable for all actual damages and all court costs and, in the court's discretion, reasonable attorney fees incurred by the other party as a result of that violation.

(3) A supplier or wholesaler may bring an action for declaratory judgment for determination of any controversy arising pursuant to this chapter.

(4) Upon proper application to the court, a supplier or wholesaler may obtain injunctive relief against any violation of this chapter.

(5) Any legal action taken under this chapter, or in a dispute over the provisions of an agreement shall be filed in a court, state or federal, located in Mississippi, which state court is located in, or which federal court has

jurisdiction and venue of, the county in which the wholesaler maintains its principal place of business in this state.

SOURCES: Laws, 1995, ch. 619, § 11, eff from and after passage (approved April 7, 1995).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 94 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 142 et seq.

§ 67-7-23. Waiver of rights or causes of action.

No right or cause of action authorized by Mississippi law shall be waived by the supplier or wholesaler unless specifically waived in the agreement.

SOURCES: Laws, 1995, ch. 619, § 12, eff from and after passage (approved April 7, 1995).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 94 et seq.

CJS. 48 C.J.S., Intoxicating Liquors §§ 142 et seq.

CHAPTER 9

Possession or Transportation of Alcoholic Beverages, Light Wine, or Beer

Sec.
67-9-1. Transportation and possession of alcoholic beverages, light wine and beer by person holding an alcohol processing permit.

§ 67-9-1. Transportation and possession of alcoholic beverages, light wine and beer by person holding an alcohol processing permit.

Notwithstanding the provisions of any section of Title 27 or 67, Mississippi Code of 1972, it shall be lawful for any person holding an alcohol processing permit to transport and possess alcoholic beverages, light wine and beer, in any part of the state, for his or her use in cooking, processing or manufacturing products which contain alcoholic beverages as an integral ingredient, in amounts as limited by the Alcoholic Beverage Control Division of the State Tax Commission. The authority to transport and possess alcoholic beverages, light wine and beer under this section exists regardless of whether (a) the county or municipality in which the transportation or possession takes place has voted for or against coming out from under the dry law, or (b) the transportation, storage, sale, distribution, receipt or manufacture of light wine and beer otherwise is prohibited.

The provisions of this section shall not be construed as amending, repealing or otherwise affecting any statute or any lawfully adopted ordinance, rule or regulation that prohibits or restricts the location at which, or the premises upon which, alcoholic beverages, light wine or beer may be sold or consumed.

SOURCES: Laws, 1996, ch. 417, § 1, eff from and after July 1, 1996.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Transportation of alcoholic beverages generally, see § 27-71-15.

Exception to applicability of local option alcoholic beverage control law, see § 67-1-7.

Prohibitions against possession of alcoholic beverages generally, see § 67-1-9.

Local option election to render local option alcoholic beverage control law effective in county, see §§ 67-1-11, 67-1-13.

Local option election to render local option alcoholic beverage control law effective in certain municipalities see § 67-1-14.

Local option elections regarding light wines and beer in county, see § 67-3-7.

Local option elections regarding light wines and beer in certain municipalities, see § 67-3-9.

Prohibition against possession of light wine and beer in dry counties, see § 67-3-13.

Interference with transportation of light wines and beer, § 67-3-67.

Exception to prohibition against possession of light wine and beer in dry counties, see § 67-7-13.

Unlawful transportation of intoxicating liquors, § 97-31-47.

Transportation from without the state, see § 97-31-47.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 15, 28-44, 172, 188, 266, 270, 280, 296, 297, 302, 313, 323, 351, 377, 400-402, 406, 407, 409, 422, 428.

CJS. 48 C.J.S., Intoxicating Liquors §§ 44, 142, 161, 162, 297, 298, 369-372.

TITLE 69

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CHAPTER 1

Agriculture and Commerce Department; Council on Agriculture

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GENERAL PROVISIONS

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§ 69-1-1. Department of Agriculture and Commerce created.

A Department of Agriculture and Commerce is created and established under the management and control of a public officer to be known as the Commissioner of Agriculture and Commerce, who shall have competent knowledge of agriculture, mining, manufacturing, statistics and general industries, must be an experienced and practical agriculturist; and shall be elected by the people at the time and in the manner that other state officers are elected.

SOURCES: Codes, 1906, § 1622; Hemingway's 1917, § 3403; 1930, § 3599; 1942, § 4415; Laws, 1958, ch. 148, § 1.

Cross References — Salary of Commissioner of Agriculture and Commerce, see § 25-3-31.

Duty of Department of Agriculture and Commerce when chemical located in underground water exceeds or is likely to exceed state standards and has source not within regulatory jurisdiction of Commission on Environmental Quality, see § 49-17-26.

Deposit, to the credit of the Department of Agriculture and Commerce for the use and benefit of the agriculture and forestry museum, of proceeds from the conveyance of certain lands to the Mississippi Department of Transportation, see § 65-1-163.

Studies of merits or feasibility of commodity exchange entity, Farm Assistance in Rural Mississippi Program, and marketing outlets, see § 69-1-49.

Organization of department, see § 69-1-203.

Assistance by Department of Agriculture and Commerce in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

Regulation of grain dealers, see §§ 75-45-301 et seq.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 16 et seq.

CJS. 3 C.J.S., Agriculture §§ 1 et seq.

§ 69-1-3. Term of office of commissioner.

The term of office of the Commissioner of Agriculture and Commerce shall be four years, and any vacancy occurring shall be filled by appointment by the Governor as provided by law.

SOURCES: Codes, 1906, § 1623; Hemingway's 1917, § 3404; 1930, § 3600; 1942, § 4416.

Cross References — Provision that a Commissioner of Agricultural and Commerce shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

JUDICIAL DECISIONS

3.5 Domestic Violence.

In an action arising out of an automobile accident that occurred at the entrance to a municipal airport, which was physically located in Rankin County, plaintiff's allegations that the other driver violated state motor vehicle statutes (Miss. Code Ann. §§ 63-15-43 and 63-3-801) and that plaintiff's insurer violated Miss. Code Ann. § 83-11-101 by failing to compensate him adequately for medical expenses under his uninsured motorist policy were insufficient to establish jurisdiction in Hinds county under Miss. Code Ann. § 61-9-3(3), even if the airport were to be found to belong to the City of Jackson, which is located in Hinds county; Miss. Code Ann. § 61-9-3(3) does not apply because the statutes alleged to have been violated were not against laws resulting from action by the municipal officials of Jackson, nor laws which are "of and applicable to" the City of Jackson, but rather, were "of" the Mississippi State Legislature and resulted from state action. Holmes v. McMillan, 21 So. 3d 614 (Miss. 2009).

§ 69-1-5. Oath and bond of commissioner.

The commissioner, before entering upon the duties of the office, must take and subscribe the oath of office prescribed by the constitution, and must enter into bond payable to the State of Mississippi, in the sum of five thousand dollars with a guaranty company, the expense of such bond being paid by the state. The bond must be approved by the Attorney General and when approved shall, together with the oath of office, be filed in the office of the secretary of state.

SOURCES: Codes, 1906, § 1625; Hemingway's 1917, § 3406; 1930, § 3601; 1942, § 4417.

Cross References — Oaths of office and official bonds, generally, see §§ 25-1-9 et seq.

§ 69-1-7. Place of office.

The Commissioner of Agriculture and Commerce must keep his office in the city of Jackson.

SOURCES: Codes, 1906, § 1627; Hemingway's 1917, § 3408; 1930, § 3602; 1942, § 4418.

§ 69-1-9. Appointment of clerk; oath and term of office.

The Commissioner of Agriculture and Commerce must appoint a clerk, who must take the oath of office to discharge faithfully all the duties, which are or may be required of him by law. The clerk shall hold office during the term of the commissioner by whom he is appointed, and until the appointment and qualification of his successor, unless sooner removed.

SOURCES: Codes, 1906, § 1628; Hemingway's 1917, § 3409; 1930, § 3603; 1942, § 4419.

§ 69-1-11. Duties and salary of clerk.

The clerk must discharge such duties as may be prescribed by the Commissioner of Agriculture and Commerce. The expense necessarily incurred by the clerk in traveling on business of the department, under direction of the commissioner, must be paid for and charged against the department.

SOURCES: Codes, 1906, § 1629; Hemingway's 1917, § 3410; 1930, § 3604; 1942, § 4420.

§ 69-1-13. Duties of commissioner.

The following are the duties of the Commissioner of Agriculture and Commerce:

(a) He shall encourage the proper development of agriculture, horticulture and kindred industries.

(b) He shall encourage the organization of neighborhood and county agricultural clubs and associations, and out of these the organization of the state agricultural association.

(c) He shall collect and publish statistics and such other information regarding such industries of this state and of other states as may be of benefit in developing the agricultural resources of the state. To this end he shall put himself in connection and shall cooperate with the agricultural department of other states and with the Commissioner of Agriculture of the United States, and shall provide for the proper and careful distribution of all documents and information coming into his possession on account of the department that may be of interest and benefit to the people of the state.

(d) He shall cause to be investigated the diseases of grain, cotton, fruit and other crops grown in this state and also remedies for such diseases, and also the habits and propagation of the various insects that are injurious to the crops of the state and the proper mode of their destruction.

(e) He shall investigate the subject of grasses and report upon their value and the cultivation of the varieties best adapted to the different sections of the state.

(f) He shall inquire into the subjects connected with dairying that he may deem of interest to the people of the state, and in this connection the raising of stock and poultry, the obtaining of such as are of most value, and the breeding and propagation of the same; and shall encourage raising of fish and the culture of bees.

(g) He shall investigate the subjects of subsoiling, drainage, etc., and the best modes of effecting each, and of irrigation and what portions of the state can be best benefited thereby.

(h) He shall investigate and report upon the culture of wool and the utility and profit of sheep-raising, also the culture of silk and its manufacture and preparation for market.

(i) He shall investigate and report on the question of broadening the market for cotton and cotton goods in the United States and foreign countries.

(j) He shall cause a proper collection of agricultural statistics to be made annually, and to this end shall furnish blank forms to the tax assessors of each county, and it is made the special duty of the tax assessor to whom said blanks are furnished to report to the bureau a list of all public or private ginners in his county, with their post offices, upon the demand of the commissioner. It shall be the duty of the commissioner to furnish to such ginner a form or forms of report to be made to the bureau at such time as the commissioner may direct. A failure to make such reports on the part of the ginner or assessor as required by said commissioner shall be deemed a misdemeanor, and, upon conviction, punished as provided by law. It shall be the duty of the members of the boards of supervisors and the county tax assessor of each county in this state to make such reports as may be required by this bureau touching the matter within the scope of this chapter; and failure of any supervisor or tax assessor to make such report when required shall be deemed a misdemeanor and shall be punished as provided by law.

(k) He shall appoint county correspondents who shall report to him from time to time, as may be desired.

(*l*) He shall collect specimens of wood suitable for manufacture and other purposes, and specimens of agricultural, mineral, phosphate and marl deposits of the state; cause correct analysis of such as may be deemed expedient to be made and recorded in a substantial book to be kept for this purpose.

(m) He shall also, as soon as practicable, prepare a convenient handbook with necessary illustrated maps, which shall contain all necessary information as to the mines, mineral, forest, soil, and other products, climate, water, waterpower for the establishing of factories, land, flowers, fisheries, mountains, streams, and all other statistics as are best adapted to the giving of proper information and the attraction of advantages which the state affords to immigrants, and shall make illustrated expositions thereof whenever practicable at international and state expositions.

(n) He shall have the primary responsibility for developing programs that will enhance the marketing of the state's agricultural products to both national and international markets.

SOURCES: Codes, 1906, § 1630; Hemingway's 1917, § 3411; 1930, § 3605; 1942, § 4421; Laws, 1987, ch. 482, § 29, eff from and after passage (approved April 15, 1987).

Cross References — Assembly of data on natural resources by secretary of state, see § 7-3-49.

County Extension Department for promotion and development of agriculture, see § 19-5-63.

Duty of county assessor to gather and record data, see § 27-1-19.

Agricultural seeds, generally, see §§ 69-3-1 et seq.

Authority of commissioner to enforce regulations of agricultural co-operative associations, see § 69-7-407.

Duty of commissioner to enforce pesticide application law, see § 69-23-103.

State soil and water conservation committee, generally, see § 69-27-9.

Duties of commissioner under public grain warehouse law, see § 75-44-7.

Duties of commissioner with respect to grain dealers law, see § 75-45-313.

Duty of commissioner to enforce statute on commercial fertilizers, see § 75-47-3.

Duty to administer and enforce certain provisions pertaining to gasoline and petroleum products, see § 75-55-3.

Duty to administer and enforce certain provisions pertaining to antifreeze and coolants, see § 75-56-5.

ATTORNEY GENERAL OPINIONS

Based on lack of legislation to contrary, it may be implied from powers bestowed on commissioner of agriculture and commerce pursuant to Miss. Code Section 69-1-13 that Department of Agriculture and Commerce has authority to enter into exclusive soft drink beverage contract on Jim Buck Ross Mississippi Agriculture and Forestry Museum property. Ross, Jan. 3, 1993, A.G. Op. #92-1016.

The Department of Agriculture and Commerce may permit the use of the Mississippi Agriculture and Forestry Museum to another state agency at no cost, and may waive the lease fee for other governmental entities. The agency may reduce the lease rate to private individuals or organizations to encourage use on certain days of the week, so long as the policy is applied consistently and uniformly and the reduction does not constitute a donation to a private organization. Spell, March 30, 2007, A.G. Op. #07-00156, 2007 Miss. AG LEXIS 69.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 17.

CJS. 3 C.J.S., Agriculture § 7.

§ 69-1-14. Employment of counsel by commissioner; compensation and expenses.

(1) The Commissioner of Agriculture and Commerce is hereby authorized and empowered to employ an attorney to represent the department of agriculture and commerce and to fix his compensation subject to the approval of the state personnel board. Said attorney shall be a full-time employee of the department of agriculture and commerce and shall be furnished such office space and clerical assistance as shall be necessary. In addition to his duties with the department of agriculture and commerce, said attorney shall represent the board of animal health, the Mississippi State Fair Commission and the Mississippi Central Market Board. The salary and expenses of said attorney shall be paid from any funds available to the department of agriculture and commerce, the board of animal health, the Mississippi Fair Commission and the Mississippi Central Market Board in a ratio commensurate with the services provided by said attorney to each of the said agencies.

(2) The Department of Agriculture and Commerce, the board of animal health, the Mississippi Fair Commission and the Mississippi Central Market Board are hereby authorized and empowered to expend such sums from any funds available for the purposes of paying the salary and expenses of the attorney provided for in subsection (1).

SOURCES: Laws, 1983, ch. 365, §§ 1, 2, eff from and after July 1, 1983.

Cross References — Authority of the Mississippi Fair Commission to employ an attorney, see § 69-5-3.

Authority of the Mississippi Central Marketing Board to employ an attorney, see § 69-7-109.

Authority of the Board of Animal Health to employ an attorney, see § 69-15-7.

§ 69-1-15. Commissioner to make report.

The Commissioner of Agriculture and Commerce shall make and submit to the Governor on or before the 10th day of January each year a report showing all the expenditures of the bureau for the preceding year and shall make a full and comprehensive report of the scope of the work and expenditures of the bureau to each session of the Legislature within ten days of the convening thereof.

SOURCES: Codes, 1906, § 1631; Hemingway's 1917, § 3412; 1930, § 3606; 1942, § 4422.

§ 69-1-17. State institutions to aid in furnishing data; free transportation.

In order to facilitate the collection and collation of the accurate information of the resources of the state along all lines, the heads of the several departments of the state government and of the state institutions are hereby required to furnish accurately such information as may be at their command to the Commissioner of Agriculture and Commerce when called upon for same; and the commissioner is hereby empowered to enter manufacturing establishments chartered by the state, in prosecution of this work, and the corporations operating the same shall furnish such information as may not be injurious to their business, when requested to furnish same by the commissioner. The commissioner and his clerks shall have the right to accept and use free transportation over steamships, steamboat and railway lines.

SOURCES: Codes, 1906, § 1632; Hemingway's 1917, § 3413; 1930, § 3607; 1942, § 4423.

Cross References — Assembly of data on natural resources by Secretary of State, see § 7-3-49.

§ 69-1-18. Definitions; authority of commissioner to promulgate rules and regulations and to conduct sanitation inspections in retail food stores; licensing; penalties.

(1) The following words and phrases shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting: the growth of infectious or toxigenic microorganisms; the growth and toxin production of Clostridium botulinum; or in raw shell eggs, the growth of salmonella enteritis. "Potentially hazardous food" includes an animal food (of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; and cut melons.

(b) "Retail food establishment" means any establishment where food and food products are offered for sale to the ultimate consumer and intended for off-premise consumption. Such food or food products may be exposed to varying degrees of preparation and may often need further preparation or processing after it has been purchased. A retail food establishment does not include:

(i) An establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) A food processing plant; and

(iv) A food establishment as defined by the Mississippi State Department of Health.

(2) The commissioner and his agents shall have the authority:

(a) To promulgate rules and regulations establishing certain sanitation requirements for retail food establishments;

(b) To conduct sanitation inspections in retail food establishments; and

(c) To publish the names and addresses of violators and such information pertaining to violation(s) of this section as he deems appropriate.

(3) Each retail food establishment, before engaging in business, shall obtain a license from the commissioner. Owners of more than one (1) retail food establishment must obtain a license for each establishment. A license fee of Ten Dollars ($10.00) must be paid to the department before a license will be issued. Application for such license shall be made on forms prescribed and furnished by the commissioner. Licenses issued under this subsection by the commissioner shall expire on June 30 each year and application for renewals thereof shall be made annually before the expiration date. Licenses shall not be transferable and application must be made for a new license if there is any change in location or ownership of the business.

(4) Any person who violates any provision of this law or the regulations adopted hereunder shall be guilty of a misdemeanor, and, upon conviction, shall be punished by the imposition of a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months, or both.

(5) The commissioner may impose administrative penalties for violation of this section.

(6) Any person found by the commissioner to be in violation of this section may be assessed a penalty in an amount of not more than Five Hundred Dollars ($500.00) and subsequent violations within a six-month period at a penalty of not more than One Thousand Dollars ($1,000.00). In addition to, or in lieu of, such penalties the commissioner may suspend or revoke the permit issued to such person under terms of this section.

(7) When any violation of this section or the rules and regulations promulgated hereunder occurs, or is about to occur, that presents a clear and

present danger to the public health, safety or welfare requiring immediate action, the commissioner or any of the department's field inspectors, or any other persons authorized by the commissioner, may issue an order to be effective immediately before notice and a hearing, that imposes any or all of the following penalties against the accused: (a) a stop sale order on any product in violation of this section; (b) an order to seize any product that is not in compliance with this section and require it to be denatured or destroyed under the supervision of the department's inspectors; or (c) an order that the retail food establishment or any department within such establishment cease operations until it is in compliance with this section. The order shall be served upon the accused in accordance with Rule 4 of the Mississippi Rules of Civil Procedure or certified mail or it may be served by giving a copy of the order to the manager of the retail food establishment or, where no manager is present, an employee of the establishment. The accused shall then have twenty (20) days after service of the order upon him within which to request an informal administrative review before the Director of the Bureau of Regulatory Services in the department, or the director's designee, who shall act as reviewing officer. If the accused makes such a request within such time, the reviewing officer shall provide an informal administrative review to the accused within ten (10) days after such request is made. If the accused does not request an informal administrative review within twenty (20) days, then he shall have waived his right to such review. At the informal administrative review, there shall be no court reporter or record made of the proceedings. Each party may present its case in the form of documents, oral statements or any other method. The rules of evidence shall not apply. The reviewing officer's decisions shall be in writing, and it shall be delivered by certified mail. If the accused is aggrieved by the order of the hearing officer, he may appeal to the commissioner for a full evidentiary hearing. Such appeal shall be perfected by filing a notice of appeal with the commissioner within thirty (30) days after the order of the reviewing officer is served on the appealing party. The hearing before the commissioner or his designee shall be held within a reasonable time after the appeal has been perfected. Failure to perfect an appeal within the allotted time shall be deemed a waiver of such right.

SOURCES: Laws, 1997, ch. 348, § 1; Laws, 2000, ch. 514, § 1, eff from and after July 1, 2000.

ATTORNEY GENERAL OPINIONS

Subsection (2) provides the Mississippi Department of Agriculture and Commerce with the general authority and duty to regulate retail food sanitation within the state, with a definition of "retail food establishment" broad enough to include establishments that sell seafoods. Spell, Jr., Nov. 2, 2001, A.G. Op. #01-0608.

§ 69-1-19. Commissioner to establish grades and standards of farm products.

The Commissioner of Agriculture and Commerce is hereby authorized to establish grades and standards from time to time for farm products grown or produced in this state, provided that any grade or standard on any farm product which may be established by the United States Department of Agriculture under authority of congress shall also be established by the commissioner of agriculture and commerce as the standard for this state.

The Commissioner of Agriculture and Commerce may also establish standard sizes for boxes, or containers, used in the handling of fruits and vegetables in this state, provided such standards established by the commissioner shall conform with the federal standard container act of congress. The commissioner may also establish the standard weight of each box or container when filled with fruits or vegetables.

SOURCES: Codes, 1930, § 3608; 1942, § 4424; Laws, 1924, ch. 274; Laws, 1948, ch. 191, § 1.

Cross References — Regulation of marketing of vegetables by cooperative associations, see §§ 69-7-405 et seq.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 48 et seq.

CJS. 3 C.J.S., Agriculture § 7.

§ 69-1-21. Certifying grade and condition of farm products.

(1) The Commissioner of Agriculture and Commerce is hereby authorized to investigate and certify to shippers and other financially interested parties, the grade, quality or condition of farm products in accordance with the standard established by him. The certificates issued by the commissioner pursuant to this chapter shall be received in all counties of this state as prima facie evidence of the truth of statements contained therein. For this service the commissioner may charge reasonable fees designed to cover the cost of these services.

(2) All fees collected under the provisions of this section shall be deposited in the general fund of the state treasury.

SOURCES: Codes, 1930, § 3609; 1942, § 4425; Laws, 1924, ch. 274; Laws, 1970, ch. 255, § 2, eff from and after July 1, 1970.

Cross References — Inspection of seed and fertilizer by federal government, see § 69-1-29.

Regulation of marketing of vegetables by cooperative associations, see §§ 69-7-405 et seq.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 48 et seq.

CJS. 3 C.J.S., Agriculture § 7.

§ 69-1-23. Inspection of grain crops; definitions; licensing of inspectors; grading samples.

(1) The Mississippi Department of Agriculture and Commerce is hereby designated as the official inspection agency within the State of Mississippi, or for a company domiciled in the State of Mississippi, to certify to producers, shippers, and other financially interested parties the grade, quality, or condition of grain crops. Grain crops for the purpose of this chapter shall be those crops for which standards have been established under the United States Grain Standards Act; namely, wheat, oats, corn, barley, rye, flaxseed, soybeans, grain sorghum, and mixed grains and other crops for which standards may hereafter be established.

(2) The Mississippi Department of Agriculture and Commerce shall have the sole authority to recommend to the U. S. Department of Agriculture the licensing of inspectors for the purpose of carrying out the inspection, grading and certification of grain inspection under the United States Department of Agriculture Grain Standards Act, except that those persons already licensed as of this date under any other authority may continue to operate in their respective designated areas.

(3) The Commissioner of Agriculture and Commerce shall adopt rules and regulations to provide that any grain producer, submitting grain for sale at any elevator in the state, shall be entitled to have that grain graded by an official inspector. The grain producer shall be responsible for and shall pay the cost of grading such sample.

SOURCES: Codes, 1942, § 4425.3; Laws, 1964, ch. 213; Laws, 1989, ch. 348 § 1; Laws, 1997, ch. 398, § 1, eff from and after passage (approved March 18, 1997).

Cross References — Services provided by state chemical laboratory, see §§ 57-21-1 et seq.

Inspection of seed and fertilizer by federal government, see § 69-1-29.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 48 et seq.

CJS. 3 C.J.S., Agriculture § 7.

§ 69-1-25. Commissioner, Governor and Attorney General to enforce regulations as to products coming in.

(1) The State Commissioner of Agriculture and Commerce, the Governor and the Attorney General of the State of Mississippi, are hereby authorized and empowered, in their discretion, to protect the welfare of the people of the

State of Mississippi by guaranteeing that seeds, feeds, fertilizers, bulbs, vegetables, or any and all other product of farm, grove, forest, garden and minerals, including but not limited to coal and lime, coming into the State of Mississippi meet the proper standards, in accordance with the laws of the State of Mississippi and rules and regulations drawn by the State Commissioner of Agriculture and Commerce, with the approval of the Attorney General, governing the labeling as to net weight, source of origin, purity, and grade thereof. In the case of coal or lime, the State Commissioner of Agriculture and Commerce, with the approval of the Attorney General, may promulgate rules and regulations setting up a form or forms to be used in guaranteeing the net weight at the point of delivery, to be weighed on approved scales in the presence of the purchaser.

(2) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not exceeding Five Hundred Dollars ($500.00) or imprisonment in the county jail not exceeding six months, or both, and each sale of any such goods or products without meeting the requirements of this section shall constitute a separate offense.

SOURCES: Codes, 1942, § 4425.5; Laws, 1956, ch. 132, §§ 1, 2.

Cross References — Definition of term fertilizer, see § 1-3-13.

Promulgation of regulations governing agricultural liming materials, see § 69-39-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 34.

CJS. 3 C.J.S., Agriculture § 7.

§ 69-1-27. Commissioner to co-operate with U. S. Department.

The Commissioner of Agriculture and Commerce is hereby authorized to co-operate with the secretary of the United States Department of Agriculture or any of his authorized agents or representatives in carrying out the purpose of this chapter.

SOURCES: Codes, 1930, § 3610; 1942, § 4426; Laws, 1924, ch. 274.

Cross References — Inspection of seed and fertilizer by federal government, see § 69-1-29.

§ 69-1-28. State regulations governing free-range poultry shall be no more stringent than federal regulations on free-range chickens.

Any regulations or best management practices adopted by the Commissioner of Agriculture regulating free-range poultry only shall be no more stringent or extensive in scope, coverage, or effect than federal regulations and best management practices. For purposes of this section, "free-range poultry" means poultry having free access to the outdoors through their normal growing cycle.

SOURCES: Laws, 2003, ch. 462, § 1, eff from and after July 1, 2003.

§ 69-1-29. Inspection of seed and fertilizer furnished by the federal government.

The Commissioner of Agriculture and Commerce of the State of Mississippi, is authorized and empowered to enter into an agreement and execute any contract pursuant thereto, with the secretary of agriculture of the United States for the purpose of, and providing for, inspection, by the Commissioner of Agriculture and Commerce of the State of Mississippi, of superphosphate, liming materials and seed furnished to producers by the department of agriculture of the United States as grants-in-aid to producers under its soil conservation program.

SOURCES: Codes, 1942, § 4427; Laws, 1942, ch. 258.

Cross References — Inspection of grain crops by department of agriculture and commerce, see § 69-1-23.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 37.

CJS. 3 C.J.S., Agriculture §§ 1 et seq.

§ 69-1-30. Security guards for Jim Buck Ross Mississippi Agriculture and Forestry Museum.

The Department of Agriculture and Commerce is hereby authorized to employ or to contract with private security agencies to provide security for the Jim Buck Ross Mississippi Agriculture and Forestry Museum. The jurisdiction of the security guards shall be limited to the museum property and shall not supplant the authority or jurisdiction of any state or local law enforcement officer.

SOURCES: Laws, 1984, ch. 461; Laws, 1991, ch. 516, § 2, eff from and after July 1, 1991.

Editor's Note — Laws, 1991, ch. 516, § 1, Codified as § 69-1-32, changed the name of the Mississippi Agriculture and Forestry Museum to the Jim Buck Ross Mississippi Agriculture and Forestry Museum.

§ 69-1-31. Repealed.

Repealed by Laws of 1989, ch. 544, § 161, eff from and after July 1, 1989.

[Codes, 1906, § 1622; Hemingway's 1917, § 3403; 1930, § 3599; 1942, § 4415; Laws, 1958, ch. 148, § 1]

Editor's Note — Former § 69-1-31 established a division of lime within the Department of Agriculture and Commerce.

§ 69-1-32. "Jim Buck Ross Mississippi Agriculture and Forestry Museum" designated.

The Mississippi Agriculture and Forestry Museum shall be renamed and known as the Jim Buck Ross Mississippi Agriculture and Forestry Museum. The Department of Agriculture and Commerce shall have an appropriate sign or signs placed at the museum displaying the new name of the museum.

SOURCES: Laws, 1991, ch. 516, § 1, eff from and after July 1, 1991.

§§ 69-1-33 through 69-1-39. Repealed.

Repealed by Laws of 1989, ch. 544, § 161, eff from and after July 1, 1989.

§ 69-1-33. [Codes, 1942, § 4428; Laws, 1942, ch. 255; Laws, 1944, ch. 243, § 1; Laws, 1948, ch. 192, § 1; Laws, 1958, ch. 148, § 2; Laws, 1981, ch. 322, § 1]

§ 69-1-35. [Codes, 1942, § 4430; Laws, 1942, ch. 255; Laws, 1958, ch. 148, § 3; Laws, 1971, ch. 343, § 1; Laws, 1978, ch. 364; Laws, 1980, ch. 319]

§ 69-1-37. [Codes, 1942, § 4431; Laws, 1942, ch. 255, § 4; Laws, 1944, ch. 243, § 2; Laws, 1948, ch. 360, § 1; Laws, 1958, ch. 148, § 4]

§ 69-1-39. [Codes, 1942, § 4433; Laws, 1942, ch. 255; Laws, 1958, ch. 148, § 5]

Editor's Note — Former § 69-1-33 authorized the commissioner of agriculture and commerce to establish lime crushing plants.

Former § 69-1-35 authorized the department of agriculture and commerce to buy limestone deposits.

Former § 69-1-37 related to stations, buildings and other facilities for crushing limestone.

Former § 69-1-39 provided that crushed limestone was to be sold at cost.

§ 69-1-40. Warehouses for storage of lime.

The Commissioner of Agriculture and Commerce is hereby authorized at his discretion, and when the funds are available to construct or lease, operate and maintain warehouses to be utilized as a storage place for lime to be used for agricultural purposes. Said warehouses shall be located in the area of the state commonly referred to as the "Mississippi Delta." The Commissioner of Agriculture and Commerce is further authorized and directed to operate said lime warehouses in such a way as to provide adequate amounts of lime needed for agricultural purposes.

SOURCES: Laws, 1975, ch. 383, eff from and after passage (approved March 21, 1975).

§§ 69-1-41 and 69-1-43. Repealed.

Repealed by Laws of 1989, ch. 544, § 161, eff from and after July 1, 1989.

§ 69-1-41. [Codes, 1942, § 4434; Laws, 1942, ch. 255, § 7; Laws, 1944, ch. 243, § 3; Laws, 1948, ch. 360, § 2; Laws, 1958, ch. 148, § 6; Laws, 1966, ch. 222, § 1; Laws, 1970, ch. 256, § 1]

§ 69-1-43. [Codes, 1906, § 1630; Hemingway's 1917, § 3411; 1930, § 3605; 1942, §§ 4421, 4435; Laws, 1942, ch. 255; Laws, 1958, ch. 148, § 7]

Editor's Note — Former § 69-1-41 provided methods for use of funds collected from the sale of limestone.

Former § 69-1-43 authorized the department of agriculture and commerce to issue rules and regulations for operation of sections within Chapter 1 of Title 69.

§ 69-1-45. Construction and purpose of chapter.

The provisions of this chapter shall not be construed in any way to conflict with the work and scope of the Mississippi State University of Agriculture and Applied Science and the Mississippi Experiment Station. It is the purpose of this chapter to secure the co-operation by the Department of Agriculture and Commerce with the said university and experiment station in the dissemination and publicity of such useful information as may come into the possession of said departments.

SOURCES: Codes, 1906, § 1630; Hemingway's 1917, § 3411; 1930, § 3605; 1942, § 4421.

§ 69-1-47. Funding for repairs and renovations at farmers' market.

The Mississippi Department of Agriculture and Commerce is hereby authorized and empowered, subject to the approval of the Department of Finance and Administration to borrow, from time to time, an amount not to exceed One Hundred Fifty Thousand Dollars ($150,000.00) in the aggregate for repairs and renovations at the Farmers' Market in Jackson, Hinds County, Mississippi.

The rental proceeds received by the Central Market Board shall be pledged for the payment of the principal of and interest on such loan, which shall not exceed a term of ten (10) years and shall bear an interest rate not to exceed that provided in Section 75-17-101, Mississippi Code of 1972.

SOURCES: Laws, 1987, ch. 418; Laws, 1992, ch. 452, § 1, eff from and after passage (approved May 5, 1992).

Editor's Note — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

§ 69-1-48. Authorization to accept, budget, receive and expend funds for improvements to department property and for marketing and promotion programs; funding improvements to Mississippi Agriculture and Forestry Museum.

(1) For purposes of this section, the following words shall have the meanings ascribed herein:

(a) "Department" means the Mississippi Department of Agriculture and Commerce.

(b) "Museum" means the Mississippi Agriculture and Forestry Museum.

(2) The department may accept, budget, receive and expend funds from any source for improvements to department property and for marketing and promotion programs.

(3)(a) The department may allow a federal, state, or local governmental entity or a public, private, commercial or charitable entity to use, publish or advertise the entity's name on department property and in its publications.

(b) Any funds received from this advertising shall be retained by the department and expended for improvements to its property, and marketing and promotion programs.

(c) The department may accept, budget, receive and expend these funds in accordance with rules and regulations of the Department of Finance and Administration in the manner consistent with the escalation of federal funds.

(4)(a) There is established in the State Treasury a special fund for the department for the monies collected under this section.

(b) Unexpended monies remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund.

(5)(a) The department shall make reasonable attempts to notify the donor of any donated property or artifacts determined to be obsolete to allow such donor to retake possession of such item. If efforts to notify the donor prove unsuccessful, then the department may dispose of, auction or sell any property or artifact in the possession of the museum if the department determines that it is obsolete, no longer of value or use to the museum or unclaimed by the donor.

(b) All funds received under this section on behalf of the museum, shall be transferred into the nonbudgeted enterprise fund related to the museum. The enterprise funds shall be maintained in accordance with generally accepted accounting principles and regulations prescribed by the Department of Finance and Administration.

(c) The department may expend these funds for improvements to the museum and for marketing and promotion programs for the museum in a manner consistent with the museum's historical purpose.

SOURCES: Laws, 2011, ch. 505, § 1, eff from and after passage (approved Apr. 26, 2011.)

§ 69-1-49. Studies concerning commodity exchange entity, Farm Assistance in Rural Mississippi (FARM) Program, and marketing outlets; federal assistance; reports.

(1) The Department of Agriculture and Commerce and the Mississippi Cooperative Extension Service shall study the merits of establishing a commodity exchange entity whose purpose shall be to coordinate and enhance the marketing of Mississippi crops, poultry and livestock in national and international markets. Such entity would have the authority to consign and broker such crops, poultry and livestock. A report of the study shall be submitted on or before August 1, 1987, to the Governor, Lieutenant Governor and the Legislature.

(2) The Department of Agriculture and Commerce and the Mississippi Cooperative Extension Service shall evaluate the merits of creating a Farm Assistance in Rural Mississippi (FARM) Program, which shall have as its primary features a price enhancement program and a debt reduction assistance program for crop producers. A report on this program shall be submitted on or before September 1, 1987, to the Governor, Lieutenant Governor and the Legislature.

(3) The Department of Agriculture and Commerce shall request the Agri-Marketing Service, marketing affiliate branch of the United States Department of Agriculture to conduct a feasibility study on marketing outlets. The Department of Agriculture and Commerce shall provide the assistance necessary to accomplish the purpose of this section. A report on this study shall be submitted on or before January 1, 1988, to the Governor, Lieutenant Governor and the Legislature.

SOURCES: Laws, 1987, ch. 482, § 30, eff from and after passage (approved April 15, 1987).

Federal Aspects — Distribution and marketing of agricultural products, see 7 USCS §§ 1621 et seq.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Markets and Marketing §§ 19, 21, 34 et seq.

CJS. 3 C.J.S., Agriculture §§ 24, 25.

§ 69-1-51. Repealed.

Repealed by its own terms by Laws, 1995, ch. 493, § 1, eff on July 1, 1997. [Laws, 1995, ch. 493, § 1]

Editor's Note — Former § 69-1-51 related to the licensing of out-of-state first purchasers of agricultural products.

§ 69-1-53. Studies concerning the market feasibility of the sale of hybrid bream and hybrid black stripe crappie.

The Division of Agriculture, Forestry and Veterinary Medicine at Mississippi State University shall in cooperation with the Mississippi Department of Agriculture and Commerce and the Mississippi Department of Wildlife, Fisheries and Parks: (a) study the development of a test that can be used in the field for identifying differences between wild species of game fish and game fish produced in an aquacultural facility; and (b) research the culture feasibility and market potential of the sale of hybrid bream and hybrid black stripe crappie as authorized in Section 79-22-9.

SOURCES: Laws, 1997, ch. 370, § 3, eff from and after passage (approved March 18, 1997).

§ 69-1-55. Prohibition against misrepresentation of country of origin of shrimp and crawfish by restaurant that sells imported crawfish or shrimp; penalties for violation.

(1) No owner or manager of a restaurant that sells imported crawfish or shrimp shall misrepresent to the public, either verbally, on a menu, or on a sign displayed on the premises, that the imported crawfish or shrimp is domestic.

(2) A restaurant may designate a shrimp or crawfish as having a United States country of origin if:

(a) The farm-raised shrimp or crawfish is hatched, raised, harvested and processed in the United States; or

(b) The wild shrimp or crawfish is harvested in the waters of the United States, a state or a territory of the United States and processed in the United States, a state or a territory of the United States.

(3)(a) The Commissioner of Agriculture and Commerce and the Attorney General shall regulate restaurants under this section.

(b) The commissioner shall notify, in writing, any restaurant violating this section and shall give the owner or manager three (3) days to correct the violation. No penalties under this section shall apply to any owner or manager that corrects the violation within three (3) days from the date notified by the commissioner.

(4) In addition to any other civil or criminal penalties, any person who violates this section or who otherwise misrepresents imported crawfish or shrimp as domestic may be punished by a fine of not more than One Thousand Dollars ($1,000.00). For a second offense, a person may be punished by a fine of not more than Two Thousand Dollars ($2,000.00). For any subsequent violations, a person may be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by having the license for the restaurant suspended indefinitely or until the restaurant has corrected the violation, or both. Any person against whom a complaint is made or who has been made subject to a fine or license suspension as provided by this subsection may avail themselves of a due process administrative hearing as provided by Section 69-7-616.

SOURCES: Laws, 2011, ch. 476, § 1, eff from and after July 1, 2011.

COUNCIL OF STATE AGENCIES ON AGRICULTURE

SEC.
69-1-61. Council created; composition; objectives; meetings.

§ 69-1-61. Council created; composition; objectives; meetings.

There is hereby created a Council of State Agencies on Agriculture for the primary purpose of coordinating all information, programs, activities and services in the broad field of agriculture and forestry which are authorized by state law and supported by public appropriations therefor. The council shall consist of the Commissioner of Agriculture and Commerce, State Chemist, Secretary of the Commission on Natural Resources, directors of Mississippi State University's Extension Service and Agricultural Experiment Stations, Secretary of the Marketing Council of the Department of Economic Development, the State Forester, Dean of Mississippi State University College of Agriculture, Dean of Mississippi State University School of Forestry, and Commissioner of Higher Education. The chairman shall be elected annually from the membership of the council. The commission shall meet not less than one (1) time each quarter and the members' actual and necessary expenses incurred, if any, shall be paid from their respective agency or department funds. The council will endeavor to combine and coordinate their individual and collective talents and experiences and of their respective agencies in order to promulgate plans for more orderly growth and development of all state agricultural and forestry enterprises to diminish unnecessary overlapping or duplication of programs among the ten (10) departments represented on the council. The Legislature hereby declares that there has been found to be a need for this council as an advisory group for and on behalf of the state government, and that it is charged with a broad responsibility in improving efficiency, effectiveness and success in both the production and marketing of agricultural and forestry products and thereby enhance the economic growth of this state and its citizens. The chairman is charged with the duty and responsibility of maintaining and disseminating all necessary and requisite minutes, proceedings, records and recommendations, as in the judgment of the committee are required under this section, and make a report to the Governor and the Legislature not later than December 1 of each year.

SOURCES: Codes, 1942, § 8946-171; Laws, 1971, ch. 463, § 1; Laws, 1988, ch. 518, § 89, eff from and after July 1, 1988.

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Section 57-1-54 provides that the term "Mississippi Department of Economic Development" appears in any law the same shall mean the Department of Economic and Community Development.

AUTHORITY FOR THE CONTROL OF FIRE ANTS [REPEALED]

SEC.
69-1-81 through 69-1-95. Repealed.
69-1-96 through 69-1-98. Repealed.

§§ 69-1-81 through 69-1-95. Repealed.

Repealed by Laws of 1982, ch. 388, § 9, eff from and after July 1, 1986.

[En Laws, 1976, ch. 427, §§ 1-8; Am 1978, ch. 477, §§ 1-8; Laws, 1980, ch. 332, §§ 1-8; Re & Am 1982, ch. 388, §§ 1-8; Laws, 1984, ch. 488, §§ 269-271]

Editor's Note — The provisions of former §§ 69-1-81 through 69-1-95 related to the Mississippi Authority for the Control of Fire Ants.

§§ 69-1-96 through 69-1-98. Repealed.

Repealed by Laws of 1993, ch. 316, § 4, eff from and after passage (approved March 15, 1993).

§ 69-1-96. [En Laws, 1991, ch. 533, §§ 1-3]
§ 69-1-97. [En Laws, 1991, ch. 533, § 2]
§ 69-1-98. [En Laws, 1991, ch. 533, § 3]

Editor's Note — Former §§ 69-1-96, 69-1-97, and 69-1-98 pertained to authorization, execution, fair market value, and hold harmless provisions, in connection with agreements to lease property of the former Mississippi Authority for the Control of Fire Ants.

MISSISSIPPI MARKETING OF AGRICULTURAL PRODUCTS AND INDUSTRY PROGRAM ACT OF 1988

SEC.
69-1-101. Short title.
69-1-103. Creation of "Marketing of Agricultural Products and Industry Program" and "Marketing of Agricultural Products and Industry Council"; purpose.
69-1-105. Membership of council; cooperative agreement between agencies represented on council; authority to enter into agreements and contracts; annual report; agricultural marketing director; expenses of council.
69-1-107. Duties and responsibilities of the council.
69-1-109. Rules and regulations.
69-1-111. Authorization to accept contributions, gifts and grants; agricultural marketing fund.
69-1-113. Agricultural Marketing Advisory Task Force.
69-1-115. Authorization for payment of per diem compensation and actual expenses to council members; exceptions.
69-1-117. Liberal construction; savings clause.

§ 69-1-101. Short title.

Sections 69-1-101 through 69-1-117 shall be known and cited as the "Mississippi Marketing of Agricultural Products and Industry Program Act of 1988."

SOURCES: Laws, 1988, ch. 591, § 1, eff from and after passage (approved May 24, 1988).

§ 69-1-103. Creation of "Marketing of Agricultural Products and Industry Program" and "Marketing of Agricultural Products and Industry Council"; purpose.

There is hereby created within the Department of Agriculture and Commerce the Mississippi Marketing of Agricultural Products and Industry Program, to be administered by the Mississippi Marketing of Agricultural Products and Industry Council, hereinafter referred to as "the council," for the purposes of stimulating the development of new markets for Mississippi Agricultural Products and Industry, and further encouraging the establishment, particularly in the rural areas and smaller communities of Mississippi, of industrial operations processing agricultural products to an end-usage stage, ready for sale to the markets of the nation and the world.

SOURCES: Laws, 1988, ch. 591, § 2, eff from and after passage (approved May 24, 1988).

§ 69-1-105. Membership of council; cooperative agreement between agencies represented on council; authority to enter into agreements and contracts; annual report; agricultural marketing director; expenses of council.

(1) The council shall be composed of the Chairman and Vice-chairman, House of Representatives and Senate Agriculture Committees, or their designees, the Commissioner of the Department of Agriculture and Commerce, the Director of the Department of Economic Development, and the Vice-President, Division of Agriculture, Forestry and Veterinary Medicine of Mississippi State University, Alcorn State University, Divisional Director of Agriculture and Applied Sciences, who shall enter into a cooperative agreement to identify resource availability and personnel expertise in all areas directly or indirectly related to agricultural production, management and marketing as may be deemed necessary to achieve the purposes of Sections 69-1-101 through 69-1-117. The cooperative agreement between the agencies shall include, but not be limited to, provisions that Mississippi State University through the Cooperative Extension Service, the Agricultural and Forestry Experiment Station, the College of Veterinary Medicine and the Forest Products Labs shall provide technical, educational and direct marketing assistance; basic and applied research, technology transfer, dissemination of research information, interdisciplinary teams, feasibility studies and networking; the Department of

Agriculture and Commerce shall be primarily responsible for market development, product promotion, regulatory functions in developing market standards, monitoring standards and establishment of quality control; public relations for Mississippi agriculture, institutional marketing and data collection; the Department of Economic Development shall be primarily responsible for agriculture business and economic development, and financial assistance value added processing. All council member agencies are hereby authorized and directed to utilize and share any and all available resources necessary to accomplish the purposes of Sections 69-1-101 through 69-1-117.

In addition, the council shall be authorized to contract or enter into agreements with other agencies and/or private research centers that it may deem necessary to carry out its duties and functions.

The council shall prepare and submit a comprehensive annual report to the Legislature no later than January 15 of each year.

(2) The council shall appoint an Agricultural Marketing Director, herein called director, who shall be competent and qualified in the area of marketing, agriculture or a related area and receive as compensation for services an annual salary to be established by the personnel board. The director shall be the one-point information contact on agricultural production, management and marketing issues and shall be charged with the duty of knowing the role and responsible personnel in each agency on matters related to agriculture. The director shall be directly responsible to the council for tasks assigned in the administration and implementation of programs developed by the council. The director shall be located in the Department of Agriculture and Commerce and administrative support for the director shall be the shared responsibility of the members of the council.

Any expenses incurred by the council agencies in providing support for the Mississippi Marketing of Agricultural Products and Industry program shall be included pro rata in the annual budget of the respective agency.

SOURCES: Laws, 1988, ch. 591, § 3, eff from and after passage (approved May 24, 1988).

Editor's Note — Section 57-1-54 provides that the term "Mississippi Department of Economic Development" appears in any law the same shall mean the Department of Economic and Community Development.

Cross References — Additional powers and duties of the council, see § 69-1-107.

Authority of the council to promulgate rules and regulations to carry out the provisions of the Marketing of Agricultural Products and Industry Program act, see § 69-1-109.

Direction that the agricultural marketing task force work with and over see the efforts of the council, see § 69-1-113.

§ 69-1-107. Duties and responsibilities of the council.

The duties and responsibilities of the council shall be the following:

(1) To conduct national and international market research to identify trade and investment opportunities.

(2) To provide one-on-one business assistance with research, strategic planning, partner search, evaluation, negotiation and follow-up.

(3) To identify joint ventures and licensing services.

(4) To provide special assistance to Mississippi's agricultural producers and firms engaged in the marketing of agricultural products produced in Mississippi to develop markets.

(5) To conduct market studies to identify agricultural products that can be manufactured in Mississippi from materials and resources available in or to Mississippi for which a profitable and growing market exists.

(6) To assist with layout, design, plans and specifications of plants, machinery, equipment and other facilities necessary to products in profitable volume.

(7) To advertise and solicit for production and industrial promotion purposes.

(8) To provide assistance with financial packaging by utilizing all available fund resources provided by the State of Mississippi including, but not limited to, the Small Business Investment Act, Emerging Crop Fund and the Business Financial Investment Act.

(9) To establish a Mississippi Register of Mississippi Agricultural Producers and set criteria for listing therein.

(10) To coordinate purchasing agreements between state institutions and Mississippi agricultural producers.

(11) To create, establish and organize the state into marketing districts for the most effective and efficient use of marketing resources.

(12) To provide any other assistance and services necessary to accomplish the purposes of Sections 69-1-101 through 69-1-117.

SOURCES: Laws, 1988, ch. 591, § 4, eff from and after passage (approved May 24, 1988).

Cross References — Additional powers and duties of the council, see § 69-1-105.

Authority of the council to promulgate rules and regulations to carry out the provisions of the marketing of agricultural products and industry program act, see § 69-1-109.

Direction that the agricultural marketing task force work with and over see the efforts of the council, see § 69-1-113.

§ 69-1-109. Rules and regulations.

The council is hereby authorized and empowered to promulgate rules and regulations required to carry out the provisions of Sections 69-1-101 through 69-1-117.

SOURCES: Laws, 1988, ch. 591, § 5, eff from and after passage (approved May 24, 1988).

§ 69-1-111. Authorization to accept contributions, gifts and grants; agricultural marketing fund.

The Mississippi Marketing of Agricultural Products and Industry Council is hereby authorized and empowered to accept monetary or in-kind contributions, gifts and grants for use in the marketing program. Any such monies shall be deposited in a special fund hereby established in the State Treasury to be known as the "Agricultural Marketing Fund," to be appropriated by the Legislature for use by the Mississippi Marketing of Agricultural Products and Industry Council.

SOURCES: Laws, 1988, ch. 591, § 6, eff from and after passage (approved May 24, 1988).

§ 69-1-113. Agricultural Marketing Advisory Task Force.

(1) The Agricultural Marketing Advisory Task Force is hereby created, to be composed of the Commissioner of the Department of Agriculture and Commerce; the Vice-President, Division of Agriculture Forestry and Veterinary Medicine, Mississippi State University; Alcorn State University, Divisional Director of Agriculture and Applied Sciences; Chairman and Vice-chairman, House of Representatives and Senate, Agriculture Committee; Chairman, House Ways and Means Committee; Chairman, Senate Finance Committee; Chairman and Vice-chairman, Senate and House of Representatives, Appropriations Committee; and the Director, the Department of Economic Development. The Legislative Committee Chairmen may designate other members of the respective committees to serve as his representative. The members of the task force shall meet and organize on or before May 6, 1988, at 12:00 Noon in the old Supreme Court Chamber of the New Capitol. The Chairman, Senate Agriculture Committee, shall serve as Chairman of the task force until July 1, 1989, at such time the Chairman, House of Representatives Agriculture Committee, shall become Chairman of the task force and serve for one (1) fiscal year. The Chairmen shall serve alternate terms thereafter.

(2) The task force shall work with and oversee the efforts of the Mississippi Marketing of Agricultural Products and Industry Council to develop an overall market plan, define the relationship of the public agencies' role in marketing, make recommendations concerning organization and funding in production, management and marketing areas and make recommendations for specific functions and responsibilities of state agencies related to the agricultural marketing program.

(3) The Mississippi Marketing of Agricultural Products and Industry Council shall meet and organize immediately upon adjournment of the organizational meeting of the task force.

SOURCES: Laws, 1988, ch. 591, § 7, eff from and after passage (approved May 24, 1988).

Editor's Note — Section 57-1-54 provides that the Mississippi Development Authority shall be the Department of Economic and Community Development, and that whenever the term "Mississippi Department of Economic and Community Development," "Mississippi Department of Economic Development," or any variation thereof, appears in any law the same shall mean the Mississippi Development Authority.

§ 69-1-115. Authorization for payment of per diem compensation and actual expenses to council members; exceptions.

Members of the council and task force shall serve without compensation, provided that they shall be entitled to per diem compensation as is authorized by law for each day occupied with the discharge of official duties as members of the council or task force and all actual, necessary expenses incurred in the discharge of their official duties, including mileage as authorized by law. However, no member shall be authorized to receive reimbursement for expenses, including mileage, or per diem compensation unless such authorization appears in the minutes of the council or task force and is signed by the chairman or vice-chairman. The members of the council or task force shall not receive per diem or expenses while the Legislature is in session. All expenses incurred by and on behalf of the council or task force shall be paid from a sum to be provided in equal portion from the contingency funds of the Senate and House of Representatives.

SOURCES: Laws, 1988, ch. 591, § 8, eff from and after passage (approved May 24, 1988).

§ 69-1-117. Liberal construction; savings clause.

The provisions of Sections 69-1-101 through 69-1-117 shall be liberally construed to accomplish the purposes of Sections 69-1-101 through 69-1-117. The powers granted and the duties imposed in Sections 69-1-101 through 69-1-117 shall be construed to be independent and severable. If any one or more sections, subsections, sentences or parts of any of Sections 69-1-101 through 69-1-117 shall be adjudged unconstitutional or invalid, such adjudication shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

SOURCES: Laws, 1988, ch. 591, § 9, eff from and after passage (approved May 24, 1988).

MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE REORGANIZATION ACT OF 1991

SEC.
69-1-201. Short title.
69-1-203. Functions of department; organization of department into offices; duties of offices.

§ 69-1-201. Short title.

This act [Laws, 1991, ch 530] shall be known and may be cited as the "Mississippi Department of Agriculture and Commerce Reorganization Act of 1991."

SOURCES: Laws, 1991, ch. 530, § 1, eff from and after July 1, 1991.

Editor's Note — Laws, 1991, ch. 530, enacted sections 69-1-201 and 69-1-203. For a complete list of sections affected by Laws, 1991, ch. 530, see Table B, Allocation of Acts, 1991, in the Statutory Tables volume.

§ 69-1-203. Functions of department; organization of department into offices; duties of offices.

The Department of Agriculture and Commerce shall promote the development of agriculture and aquaculture for both native and nonnative species. The department shall be organized into the Administration Office, the Regulatory Office, and the Marketing, Agricultural Development and Finance Office. Each office shall have the duties hereinafter specified in addition to any other duties assigned to it by the commissioner.

The Administration Office shall consist of such employees as may be assigned to it by the commissioner and shall have exclusive responsibility for the following functions of the department:

(a) Accounting;
(b) Payroll;
(c) Purchasing;
(d) Data processing;
(e) Personnel;
(f) Motor pool and vehicles;
(g) Maintenance; and
(h) Printing and records.

The Regulatory Office shall administer those laws relating to the regulation of the labels of syrup containers; the regulation of the sale of planting seed; the regulation of the sale of livestock by weight; the protection of the health of swine; the inspection of grain crops; the testing of the accuracy of petroleum pumps; the inspection of milk manufacturing plants and producers; the establishment of standards for frozen desserts sold in Mississippi; the licensing of exotic bird dealers; the regulation of the disposition of animal and poultry inedible waste; the regulation of the labeling of catfish; the adoption of systems of weights and measures for all commercial purposes in Mississippi; the inspection of meat and poultry and the licensing of facilities used for the processing thereof; and the regulation of the measurement and receiving of pulpwood.

The Marketing, Agricultural Development and Finance Office shall develop direct contact with potential buyers worldwide for the Mississippi agricultural community to expand domestic and international markets; develop and regulate aquaculture production as provided in the Mississippi Aquaculture Act of 1988; and operate and administer the Mississippi Market Bulletin, the Market News Service, the Mississippi Agriculture and Forestry Museum and the Centennial Farm Family Program. This office shall also be responsible for the collection, analysis and dissemination of statistical data concerning the production, supply, price and other aspects of the state's agricultural economy.

SOURCES: Laws, 1991, ch. 530, § 2; Laws, 1992, ch. 363 § 1, eff from and after passage (approved April 21, 1992).

Editor's Note — Laws, 1992, ch. 332, § 1, effective from and after passage (approved April 20, 1992), provides as follows:

"SECTION 1. The Mississippi Department of Agriculture and Forestry Museum is authorized in its discretion to convey to the Mississippi State Highway Department on behalf of the Mississippi Department of Agriculture and Forestry Museum real property described as follows:

"PARCEL NO. 1.

"Begin at a point on the present northerly right-of-way line of Mississippi Highway No. 25 (Lakeland Drive) that is 100 feet northerly of the centerline of survey of State Project No. 79-0056-01-035-11 at highway survey station 47+12.83; from said point of beginning run thence northeasterly a distance of 96 feet more or less to a point that is 115 feet northerly of and perpendicular to the centerline of survey of said project at Station 48+10.69; thence north 87 Degrees 59 Minutes East along a line that is parallel with and 115 feet northerly of the centerline of survey of said project, a distance of 105.7 feet; thence southeasterly a distance of 63 feet more or less to a point that is 85 feet northerly of and perpendicular to the centerline of survey of said project at Station 11+50; thence southeasterly a distance of 103 feet more or less to a point that is 80 feet northerly of and perpendicular to the centerline of survey of said project at Station 12+50; thence easterly along a line that is parallel with and 80 feet northerly of the centerline of survey of said project a distance of 497 feet more or less to a point that is 80 feet northerly of and measured radially to the centerline of survey of said project at Station 17+50; thence northeasterly along the proposed northerly right-of-way line of said project a distance of 73 feet more or less to the east line of the Agriculture and Forestry Museum Property; thence southerly along said east property line a distance of 23 feet more or less to the present northerly right-of-way line of Mississippi Highway No. 25; thence westerly along said present northerly right-of-way line of Mississippi Highway No. 25 a distance of 925 feet more or less to the point of beginning and containing 0.61 acres more or less and being situated in and a part of the South Half of the Northwest Quarter of Section 25, Township 6 North, Range 1 East, First Judicial District, Hinds County, Mississippi."

Cross References — Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

ATTORNEY GENERAL OPINIONS

Jim Buck Ross Mississippi Agriculture and Forestry Museum is operated and administered by Mississippi Department of Agriculture and Commerce through general and broad grant of authority pursuant to Miss. Code Section 69-1-203. Ross, Jan. 3, 1993, A.G. Op. #92-1016.

The Mississippi Department of Agriculture and Commerce may rent space to the Craftsmen's Guild of Mississippi, Inc., at the Jim Buck Ross Mississippi Agriculture and Forestry Museum upon such terms and for such consideration, monetary or otherwise, as the Department may find as a matter of fact is sufficient. Spell, April 24, 1998, A.G. Op. #98-0225.

The Department of Agriculture and Commerce may permit the use of the Mississippi Agriculture and Forestry Museum to another state agency at no cost, and may waive the lease fee for other governmental entities. The agency may reduce the lease rate to private individuals or organizations to encourage use on certain days of the week, so long as the policy is applied consistently and uniformly and the reduction does not constitute a donation to a private organization. Spell, March 30, 2007, A.G. Op. #07-00156, 2007 Miss. AG LEXIS 69.

DISPARAGEMENT OF PERISHABLE AGRICULTURAL OR AQUACULTURAL FOOD PRODUCT

SEC.

69-1-251. Legislative findings.

69-1-253. Definitions.

69-1-255. Cause of action for damages and appropriate relief.

69-1-257. Limitations of action.

§ 69-1-251. Legislative findings.

The Legislature finds that the production of agricultural and aquacultural food products constitutes an important and significant portion of the state economy and that it is beneficial to the citizens of this state to protect the vitality of the agricultural and aquacultural economy by providing a cause of action for producers of perishable agricultural food products to recover damages for the disparagement of any perishable agricultural or aquacultural food product.

SOURCES: Laws, 1994, ch. 605, § 6, eff from and after July 1, 1994.

§ 69-1-253. Definitions.

As used in Sections 69-1-251 through 69-1-257, the following terms shall have the following meanings:

(a) "Disparagement" means dissemination to the public in any manner of any false information that the disseminator knows to be false, and which states or implies that a perishable agricultural or aquacultural food product is not safe for consumption by the consuming public. Such information is presumed to be false when not based upon reasonable and reliable scientific inquiry, facts or data.

(b) "Perishable agricultural or aquacultural food product" means any food product of agriculture or aquaculture which is sold or distributed in a form that will perish or decay beyond marketability within a period of time.

SOURCES: Laws, 1994, ch. 605, § 7, eff from and after July 1, 1994.

§ 69-1-255. Cause of action for damages and appropriate relief.

Any producer of perishable agricultural or aquacultural food products who suffers damage as a result of another person's disparagement of any such perishable agricultural or aquacultural food product has a cause of action for damages and for any other appropriate relief in a court of competent jurisdiction.

SOURCES: Laws, 1994, ch. 605, § 8, eff from and after July 1, 1994.

§ 69-1-257. Limitations of action.

Any civil action for damages for disparagement of perishable agricultural or aquacultural food products shall be commenced within one (1) year after the cause of action accrues.

SOURCES: Laws, 1994, ch. 605, § 9, eff from and after July 1, 1994.

MISSISSIPPI COUNTRY OF ORIGIN LABELING LAW OF 2009

SEC.

69-1-301. Short title.
69-1-303. Definitions.
69-1-305. Requirements imposed upon retailers and suppliers of covered commodities; means of providing information.
69-1-307. Designation of country of origin of beef, lamb, pork, chicken or goat meat; contents of notice for ground beef, pork, lamb, chicken or goat.
69-1-309. Designation of country of origin of farm-raised fish or wild fish; notice to distinguish between wild fish and farm-raised fish.
69-1-311. Designation of country of origin of perishable agricultural products, ginseng, peanuts, pecans or macadamia nuts.
69-1-313. Promulgation of rules and regulations; authority to enter certain premises to conduct label reviews.
69-1-315. Authority to enter into cooperative agreements with federal government.
69-1-317. Authority to conduct audit of retailer that prepares, stores, handles or supplies covered commodities; retailer required to provide information to verify country of origin; injunctive relief for failure to provide information.
69-1-319. Written notification to retailer or supplier of violations; opportunity to correct violations; penalties; appeals.

§ 69-1-301. Short title.

Sections 69-1-301 through 69-1-319 shall be known as the "Mississippi Country of Origin Labeling Law of 2009."

SOURCES: Laws, 2009, ch. 321, § 1, eff from and after Mar. 16, 2009.

Editor's Note — Laws of 2009, ch. 321, § 12, provides:

"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-303. Definitions.

For purposes of Sections 69-1-301 through 69-1-319, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Beef" means the meat produced from cattle, including veal.

(b) "Commissioner" means the Commissioner of Agriculture and Commerce.

(c) "Covered commodity" means any of the following:

(i) Muscle cuts of beef, lamb and pork;
(ii) Ground beef, ground lamb and ground pork;
(iii) Farm-raised fish;
(iv) Wild fish;
(v) Perishable agricultural products;
(vi) Peanuts;
(vii) Meat produced from goats;
(viii) Chicken, in whole and in part;
(ix) Ginseng;
(x) Pecans; and
(xi) Macadamia nuts.

The term covered commodity does not include an item described in this paragraph if the item is an ingredient in a processed food item.

(d) "Farm-raised fish" means farm-raised fish and shellfish and includes a fillet, steak, nugget and any other flesh from a farm-raised fish or shellfish. The term farm-raised fish shall not include catfish as defined in Section 69-7-605.

(e) "Lamb" means meat, other than mutton, produced from sheep.

(f) "Perishable agricultural product" means any of the following: fresh fruits and fresh vegetables of every kind and character, whether or not frozen or packed in ice.

(g) "Pork" means meat produced from hogs or swine.

(h) "Retailer" means any establishment licensed by the commissioner under Section 69-1-18.

(i) "Supplier" means a person engaged in the business of supplying a covered commodity to a retailer.

(j) "Wild fish" means naturally born or hatchery-raised fish and shellfish harvested in the wild and includes a fillet, steak, nugget and any other flesh from wild fish or shellfish. The term wild fish does not include net-pen aquacultural or other farm-raised fish or catfish as defined in Section 69-7-605.

SOURCES: Laws, 2009, ch. 321, § 2, eff from and after Mar. 16, 2009.

Editor's Note — Laws of 2009, ch. 321, § 12, provides:

"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-305. Requirements imposed upon retailers and suppliers of covered commodities; means of providing information.

(1) A retailer of a covered commodity shall inform consumers, at the final point of sale of the covered commodity to consumers, of the country of origin of the covered commodity.

(2)(a) The information may be provided to consumers by means of a label, stamp, mark, placard or other clear and visible sign on the covered commodity or on the package, display, holding unit or bin containing the commodity at the final point of sale to consumers.

(b) If the covered commodity is already individually labeled for retail sale regarding country of origin, the retailer shall not be required to provide any additional information to comply with this section.

(3) A supplier shall provide information to the retailer indicating the country of origin of the covered commodity.

SOURCES: Laws, 2009, ch. 321, § 3, eff from and after Mar. 16, 2009.

Editor's Note — Laws of 2009, ch. 321, § 12, provides:

"This act shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-307. Designation of country of origin of beef, lamb, pork, chicken or goat meat; contents of notice for ground beef, pork, lamb, chicken or goat.

(1) United States country of origin. A retailer of a covered commodity that is beef, lamb, pork, chicken or goat meat may designate the covered commodity as exclusively having a United States country of origin only if the covered commodity is derived from an animal that was:

(a) Exclusively born, raised and slaughtered in the United States; or

(b) Born and raised in Alaska or Hawaii and transported for a period of not more than sixty (60) days through Canada to the United States and slaughtered in the United States.

(2) A retailer of a covered commodity that is beef, lamb, pork, chicken or goat meat may designate the country of origin of the covered commodity as all

of the countries in which the animal may have been born, raised or slaughtered, if the commodity is derived from an animal that was:

(a) Not exclusively born, raised and slaughtered in the United States; or

(b) Born, raised or slaughtered in the United States; and

(c) Not imported into the United States for immediate slaughter.

(3) A retailer of a covered commodity that is beef, lamb, pork, chicken or goat meat that is derived from an animal imported into the United States for immediate slaughter shall designate the origin as:

(a) The country from which the animal was imported; and

(b) The United States.

(4) A retailer of a covered commodity that is beef, lamb, pork, chicken or goat meat derived from an animal not born, raised or slaughtered in the United States shall designate a country other than the United States as the country of origin.

(5) The notice of country of origin for ground beef, ground pork, ground lamb, ground chicken or ground goat shall include:

(a) A list of all countries of origin of the ground beef, ground pork, ground lamb, ground chicken or ground goat; or

(b) A list of all possible countries of origin of the ground beef, ground pork, ground lamb, ground chicken or ground goat.

SOURCES: Laws, 2009, ch. 321, § 4, eff from and after Mar. 16, 2009.

Editor's Note — Laws of 2009, ch. 321, § 12, provides:

"This act shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-309. Designation of country of origin of farm-raised fish or wild fish; notice to distinguish between wild fish and farm-raised fish.

(1) A retailer of a covered commodity that is farm-raised fish or wild fish may designate the covered commodity as having a United States country of origin only if:

(a) In the case of farm-raised fish, it is hatched, raised, harvested and processed in the United States; or

(b) In the case of wild fish, it is:

(i) Harvested in waters of the United States, a territory of the United States or a state, including the waters thereof; and

(ii) Processed in the United States, a territory of the United States or a state, including the waters thereof.

(2) The notice of country of origin for wild fish and farm-raised fish shall distinguish between wild fish and farm-raised fish.

SOURCES: Laws, 2009, ch. 321, § 5, eff from and after Mar. 16, 2009.

Editor's Note — Laws of 2009, ch. 321, § 12, provides:
"This act shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."
On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-311. Designation of country of origin of perishable agricultural products, ginseng, peanuts, pecans or macadamia nuts.

(1) A retailer of a covered commodity that is a perishable agricultural product, ginseng, peanut, pecan or macadamia nut may designate the covered commodity as having a United States country of origin only if the covered commodity is exclusively produced in the United States.

(2) If the covered commodity that is a perishable agricultural product, ginseng, peanut, pecan or macadamia nut is produced exclusively in the United States, designation of the state, region or locality of the United States where the commodity was produced shall be sufficient to identify the United States as the country of origin.

SOURCES: Laws, 2009, ch. 321, § 6, eff from and after Mar. 16, 2009.

Editor's Note — Laws of 2009, ch. 321, § 12, provides:
"This act shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."
On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-313. Promulgation of rules and regulations; authority to enter certain premises to conduct label reviews.

(1) The commissioner is authorized to promulgate any rules and regulations as are necessary for the efficient enforcement of Sections 69-1-301 through 69-1-319.

(2) The commissioner shall have authority to enter the premises of any person that prepares, stores, handles or supplies any covered commodity for retail sale to conduct label reviews of covered commodities in order to determine compliance with Sections 69-1-301 through 69-1-319.

SOURCES: Laws, 2009, ch. 321, § 7, eff from and after Mar. 16, 2009.

Editor's Note — Laws of 2009, ch. 321, § 12, provides:
"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-315. Authority to enter into cooperative agreements with federal government.

The commissioner may cooperate with and enter into agreement with agencies of the federal government in order to carry out the purpose and provisions of Sections 69-1-301 through 69-1-319. In this cooperative effort, the commissioner is authorized to accept from the federal government any advisory assistance planning and any financial aid or other aid for the program.

SOURCES: Laws, 2009, ch. 321, § 8, eff from and after Mar. 16, 2009.

Editor's Note — Laws of 2009, ch. 321, § 12, provides:

"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-317. Authority to conduct audit of retailer that prepares, stores, handles or supplies covered commodities; retailer required to provide information to verify country of origin; injunctive relief for failure to provide information.

(1) The commissioner may conduct an audit of any person that prepares, stores, handles or supplies any covered commodity for retail sale to verify compliance with Sections 69-1-301 through 69-1-319.

(2) Any person subject to an audit under this section shall provide information to the commissioner that verifies the country of origin of the covered commodities. Records maintained in the course of the normal conduct of the business of those persons, including animal health papers, import or customs documents or producer affidavits, may serve as verification.

(3) The commissioner may seek injunctive relief if a person fails to provide the information required under this section.

SOURCES: Laws, 2009, ch. 321, § 9, eff from and after Mar. 16, 2009.

Editor's Note — Laws of 2009, ch. 321, § 12, provides:

"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

§ 69-1-319. Written notification to retailer or supplier of violations; opportunity to correct violations; penalties; appeals.

(1) If the commissioner determines that a retailer is in violation of Sections 69-1-301 through 69-1-319, the commissioner shall:

(a) Notify the retailer of the determination of the commissioner; and

(b) Provide the retailer a thirty-day period, during which the retailer must take necessary steps to comply with Sections 69-1-301 through 69-1-319.

(2) If the commissioner determines that a supplier is in violation, the commissioner shall:

(a) Notify the supplier of the determination of the commissioner; and

(b) Provide the supplier a thirty-day period, beginning on the date on which the person receives the notice, during which the supplier shall:

(i) Provide the required information to the retailer; and

(ii) Provide to the commissioner a detailed plan of distribution of the required information to all retailers that are supplied covered commodities by the supplier.

(3) If at the end of the thirty-day period, the commissioner determines that the retailer or supplier failed to make a good faith effort to correct the violation or continues to be in violation, the commissioner, in addition to any other civil or criminal penalties, may fine the retailer or supplier not more than One Thousand Dollars ($1,000.00) for each violation. An appeal may be filed as provided under Section 69-25-59.

SOURCES: Laws, 2009, ch. 321, § 10, eff from and after Mar. 16, 2009.

Editor's Note — Laws of 2009, ch. 321, § 12, provides:

"Sections 69-1-301 through 69-1-319 shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

CHAPTER 2

Mississippi Farm Reform Act

General Provisions 69-2-1
Voluntary Farm Debt Mediation Program 69-2-43

GENERAL PROVISIONS

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69-2-3. Legislative intent.
69-2-5. Information regarding programs and services; assistance provided by and donations to clearinghouse; report to Governor [Repealed effective July 1, 2019].
69-2-7. Encouragement of new crops and more profitable enterprises.
69-2-9. Definitions.
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69-2-15. Interest loans from Emerging Crops Fund.
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69-2-41. Savings clause.

§ 69-2-1. Short title.

This chapter shall be known and may be cited as the Mississippi Farm Reform Act of 1987.

SOURCES: Laws, 1987, ch. 482, § 1, eff from and after passage (approved April 15, 1987).

§ 69-2-3. Legislative intent.

The Legislature hereby finds and declares that there exists within the state a serious emergency as a result of the nation's agricultural crisis and that there is a need to ensure that services are available for farmers, farm laborers, farm families and small businesses who have been adversely affected by the declining agricultural economy. Existing state programs need to be dedicated to meet these needs to the extent possible without creating additional administration. It is important that existing programs and services be coordinated into a network so that those in the agricultural and small business community can learn of these programs and services and obtain their benefits as expeditiously as possible.

SOURCES: Laws, 1987, ch. 482, § 2, eff from and after passage (approved April 15, 1987).

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 19 et seq.

CJS. 3 C.J.S., Agriculture §§ 72, 73.

§ 69-2-5. Information regarding programs and services; assistance provided by and donations to clearinghouse; report to Governor [Repealed effective July 1, 2019].

(1) The Mississippi Cooperative Extension Service shall act as a clearinghouse for the dissemination of information regarding programs and services which may be available to help those persons and businesses which have been adversely affected by the present emergency in the agricultural community. The Cooperative Extension Service shall develop a plan of assistance which shall identify all programs and services available within the state which can be of assistance to those affected by the present emergency. The Department of Agriculture and Commerce, Department of Finance and Administration, Department of Human Services, Department of Mental Health, State Department of Health, Board of Trustees of State Institutions of Higher Learning, State Board for Community and Junior Colleges, Research and Development Center, Mississippi Development Authority, Department of Employment Security, Office of the Governor, Board of Vocational and Technical Education, Mississippi Authority for Educational Television, and other agencies of the state which have programs and services that can be of assistance to those affected by the present emergency, shall provide information regarding their programs and services to the Cooperative Extension Service for use in the clearinghouse. The types of programs and services shall include, but not be limited to, financial counseling, farm and small business management, employment services, labor market information, job retraining, vocational and

technical training, food stamp programs, personal counseling, health services, and free or low cost legal services. The clearinghouse shall provide a single contact point to provide program information and referral services to individuals interested or needing services from state-funded assistance programs affecting agriculture, horticulture, aquaculture and other agribusinesses or related industries. Such assistance information shall identify all monies available under the Small Business Financing Act, the Business Investment Act, the Emerging Crops Fund legislation and any other sources which may be used singularly or combined, to provide a comprehensive financing package. The provisions of this section in establishing a single contact point for information and referral services shall not be construed to authorize the hiring of additional personnel.

(2) The Cooperative Extension Service may accept monetary or in-kind contributions, gifts and grants for the establishment or operation of the clearinghouse.

(3) The Cooperative Extension Service shall establish a method for the dissemination of information to those who can be benefited by the existing programs and services of the state.

(4) The Cooperative Extension Service shall file an annual report with the Governor, Lieutenant Governor and Speaker of the House of Representatives regarding the efforts which have been made in the clearinghouse operation. The report shall also recommend any additional measures, including legislation, which may be needed or desired in providing programs and benefits to those affected by the agricultural emergency.

SOURCES: Laws, 1987, ch. 482, § 3; Laws, 1988, ch. 503; Laws, 2004, ch. 572, § 56; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 56; reenacted and amended, Laws, 2010, ch. 559, § 56; reenacted without change, Laws, 2011, ch. 471, § 57, eff from and after July 1, 2011; reenacted without change, Laws, 2012, ch. 515, § 56, eff from and after July 1, 2012.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58, provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

Section 37-4-5 provides that the terms "Junior College Commission" and "State Board for Community and Junior Colleges," wherever they appear in the laws of Mississippi, shall mean the "Mississippi Community College Board."

Amendment Notes — The 2010 amendment reenacted and amended the section by substituting "the Emerging Crops Fund legislation" for "the Emerging Crop Fund legislation" in the next-to-last sentence in (1).

The 2011 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

Cross References — Cooperative Extension Service, see § 19-5-63.

State Board of Community and Junior Colleges, see § 37-4-3.

Board of Vocational and Technical Education, see § 37-31-207.

Mississippi Authority for Educational Television, see § 37-63-13.

Board of Trustees of State Institutions of Higher Learning, see § 37-101-15.

State Board of Health, see § 41-3-15.

Department of Mental Health, see § 41-4-5.

Small Business Financing Act, see §§ 57-10-201 through 57-10-261.
Business Investment Act, see §§ 57-61-1 through 57-61-44.
Department of Agriculture and Commerce, see § 69-1-1.
Emerging Crop Fund legislation, see § 69-2-7 et seq.
Employment Security Commission, see § 71-5-115.
Federal Aspects — Federal farm credit system, see 12 USCS § 2001 et seq.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 24.

CJS. 3 C.J.S., Agriculture §§ 72, 73.

§ 69-2-7. Encouragement of new crops and more profitable enterprises.

(1) The Legislature states that the purpose of Sections 69-2-7 through 69-2-17 of this chapter is to encourage the production of crops (plant or animal) on Mississippi farms which have not been previously produced commercially.

(2) It is the intent of the Legislature to encourage the farm sector of this state to shift from enterprises with low profit margins to those with higher profit margins.

SOURCES: Laws, 1987, ch. 482, § 4, eff from and after passage (approved April 15, 1987).

§ 69-2-9. Definitions.

For the purposes of Sections 69-2-7 through 69-2-41, the following words shall have the meanings ascribed in this section unless the context otherwise requires:

(a) "Department" means the Mississippi Department of Economic and Community Development.

(b) "Emerging crop" means any new, nontraditional plant or animal crop (as designated by a board consisting of the executive directors of the department, the Mississippi Cooperative Extension Service and the Mississippi Agricultural and Forestry Experiment Station) or as specified in Section 69-2-11 which has a development time from beginning of production to harvest or initial sale of the product of not more than five (5) years.

(c) "Farmer" means a resident of Mississippi who engages in or wishes to engage in the commercial production of an emerging crop on land in Mississippi. This term shall include individuals, partnerships and corporations.

(d) "Fund" means the Emerging Crops Fund established in Section 69-2-13.

(e) "Interest loan" means a loan made from the fund to pay the interest on a loan made by a lender to a farmer to finance the nonland capital costs of establishing production of an emerging crop.

(f) "Lender" means a commercial bank, savings bank, savings and loan association, federal land bank, farm credit bank, production credit association or other farm credit agency which is domiciled or qualified to do business in Mississippi, or the Farmers Home Administration.

(g) "Agribusiness" means any agricultural, aquacultural, horticultural, industrial, manufacturing, research and development or processing enterprise or enterprises.

SOURCES: Laws, 1987, ch. 482, § 5; Laws, 1988, ch. 356, § 1; Laws, 1988, ch. 580, § 18; Laws, 1990, ch. 570, § 17; Laws, 1996, ch. 415, § 1, eff from and after passage (approved March 25, 1996).

Cross References — Mississippi Department of Economic and Community Development, see § 57-1-1 et seq.

Federal Aspects — Farmers Home Administration, see 7 USCS §§ 1981 et seq.

§ 69-2-11. Emerging crop designations.

Emerging crop designations shall include, but not be limited to:

(a) Blueberries;

(b) Muscadines;

(c) Christmas trees;

(d) Aquaculture, including any species from the Gulf of Mexico and its tributaries;

(e) Horticulture;

(f) Rabbit farming and processing; and

(g) Others designated by the Board of Economic Development or Legislature.

SOURCES: Laws, 1987, ch. 482, § 6; Laws, 1996, ch. 415, § 2; Laws, 1998, ch. 536, § 8, eff from and after passage (approved April 9, 1998).

Editor's Note — Section 57-1-2 provides that wherever the term "Board of Economic Development" appears in the laws of the State of Mississippi, it shall mean the Department of Economic and Community Development.

Section 57-1-54 provides that the Mississippi Development Authority shall be the Department of Economic and Community Development, and that whenever the term "Mississippi Department of Economic and Community Development," "Mississippi Department of Economic Development," or any variation thereof, appears in any law the same shall mean the Mississippi Development Authority.

Cross References — Definition of "emerging crop," see § 69-2-9.

§ 69-2-13. Emerging Crops Fund; loans for agribusinesses and small business concerns; loans for planning and development districts; program to assist minority business enterprises; loans for regional crafts projects; financing agribusiness programs; funds for rehabilitation, maintenance and advertising of Mississippi Farmers Central Market; program of loan guaranties on behalf of qualified nonprofit entities designated as community development financial institutions to encourage financing for loans in low-income communities; grants to certain agribusiness enterprises processing, drying, storing or shipping peanuts; program of loan guaranties on behalf of certain sweet potato growing and farming agribusinesses.

[Through June 30, 2014, this section shall read as follows:]

(1) There is hereby established in the State Treasury a fund to be known as the "Emerging Crops Fund," which shall be used to pay the interest on loans made to farmers for nonland capital costs of establishing production of emerging crops on land in Mississippi, and to make loans and grants which are authorized under this section to be made from the fund. The fund shall be administered by the Mississippi Development Authority. A board comprised of the directors of the authority, the Mississippi Cooperative Extension Service, the Mississippi Small Farm Development Center and the Mississippi Agricultural and Forestry Experiment Station, or their designees, shall develop definitions, guidelines and procedures for the implementation of this chapter. Funds for the Emerging Crops Fund shall be provided from the issuance of bonds or notes under Sections 69-2-19 through 69-2-37 and from repayment of interest loans made from the fund.

(2)(a) The Mississippi Development Authority shall develop a program which gives fair consideration to making loans for the processing and manufacturing of goods and services by agribusiness, greenhouse production horticulture, and small business concerns. It is the policy of the State of Mississippi that the Mississippi Development Authority shall give due recognition to and shall aid, counsel, assist and protect, insofar as is possible, the interests of agribusiness, greenhouse production horticulture, and small business concerns. To ensure that the purposes of this subsection are carried out, the Mississippi Development Authority shall loan not more than One Million Dollars ($1,000,000.00) to finance any single agribusiness, greenhouse production horticulture, or small business concern. Loans made pursuant to this subsection shall be made in accordance with the criteria established in Section 57-71-11.

(b) The Mississippi Development Authority may, out of the total amount of bonds authorized to be issued under this chapter, make available funds to any planning and development district in accordance with the criteria established in Section 57-71-11. Planning and development districts which receive monies pursuant to this provision shall use such monies to make loans to private companies for purposes consistent with this subsection.

(c) The Mississippi Development Authority is hereby authorized to engage legal services, financial advisors, appraisers and consultants if needed to review and close loans made hereunder and to establish and assess reasonable fees including, but not limited to, liquidation expenses.

(3)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for the following programs of loans to be made to agribusiness or greenhouse production horticulture enterprises for the purpose of encouraging thereby the extension of conventional financing and the issuance of letters of credit to such agribusiness or greenhouse production horticulture enterprises by private institutions. Monies to make such loans by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund.

(b) The Mississippi Development Authority may make loans to agribusiness or greenhouse production horticulture enterprises. The amount of any loan to any single enterprise under this paragraph (b) shall not exceed twenty percent (20%) of the total cost of the project for which financing is sought or Two Hundred Thousand Dollars ($200,000.00), whichever is less. No interest shall be charged on such loans, and only the amount actually loaned shall be required to be repaid. Repayments shall be deposited into the Emerging Crops Fund.

(c) The Mississippi Development Authority also may make loans under this subsection (3) to existing agribusiness or greenhouse production horticulture enterprises for the purpose of assisting such enterprises to make upgrades, renovations, repairs and other improvements to their equipment, facilities and operations, which shall not exceed Two Hundred Thousand Dollars ($200,000.00) or thirty percent (30%) of the total cost of the project for which financing is sought, whichever is less. No interest shall be charged on loans made under this paragraph, and only the amount actually loaned shall be required to be repaid. Repayments shall be deposited into the Emerging Crops Fund.

(d) The maximum aggregate amount of loans that may be made under this subsection (3) to any one agribusiness shall be not more than Four Hundred Thousand Dollars ($400,000.00).

(4)(a) Through June 30, 2010, the Mississippi Development Authority may loan or grant to qualified planning and development districts, and to small business investment corporations, bank-based community development corporations, the Recruitment and Training Program, Inc., the City of Jackson Business Development Loan Fund, the Lorman Southwest Mississippi Development Corporation, the West Jackson Community Development Corporation, the East Mississippi Development Corporation, and other entities meeting the criteria established by the Mississippi Development Authority (all referred to hereinafter as "qualified entities"), funds for the purpose of establishing loan revolving funds to assist in providing financing for minority economic development. The monies loaned or granted by the

Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Twenty-nine Million Dollars ($29,000,000.00) in the aggregate. Planning and development districts or qualified entities which receive monies pursuant to this provision shall use such monies to make loans to minority business enterprises consistent with criteria established by the Mississippi Development Authority. Such criteria shall include, at a minimum, the following:

(i) The business enterprise must be a private, for-profit enterprise.

(ii) If the business enterprise is a proprietorship, the borrower must be a resident citizen of the State of Mississippi; if the business enterprise is a corporation or partnership, at least fifty percent (50%) of the owners must be resident citizens of the State of Mississippi.

(iii) The borrower must have at least five percent (5%) equity interest in the business enterprise.

(iv) The borrower must demonstrate ability to repay the loan.

(v) The borrower must not be in default of any previous loan from the state or federal government.

(vi) Loan proceeds may be used for financing all project costs associated with development or expansion of a new small business, including fixed assets, working capital, start-up costs, rental payments, interest expense during construction and professional fees related to the project.

(vii) Loan proceeds shall not be used to pay off existing debt for loan consolidation purposes; to finance the acquisition, construction, improvement or operation of real property which is to be held primarily for sale or investment; to provide for, or free funds, for speculation in any kind of property; or as a loan to owners, partners or stockholders of the applicant which do not change ownership interest by the applicant. However, this does not apply to ordinary compensation for services rendered in the course of business.

(viii) The maximum amount that may be loaned to any one borrower shall be Two Hundred Fifty Thousand Dollars ($250,000.00).

(ix) The Mississippi Development Authority shall review each loan before it is made, and no loan shall be made to any borrower until the loan has been reviewed and approved by the Mississippi Development Authority.

(b) For the purpose of this subsection, the term "minority business enterprise" means a socially and economically disadvantaged small business concern, organized for profit, performing a commercially useful function which is owned and controlled by one or more minorities or minority business enterprises certified by the Mississippi Development Authority, at least fifty percent (50%) of whom are resident citizens of the State of Mississippi. Except as otherwise provided, for purposes of this subsection, the term "socially and economically disadvantaged small business concern" shall have the meaning ascribed to such term under the Small Business Act (15 USCS, Section 637(a)), or women, and the term "owned and controlled" means a business in which one or more minorities or minority business enterprises certified by the Mississippi Development Authority own sixty percent (60%) or, in the case of a corporation, sixty percent (60%) of the voting stock, and control sixty percent (60%) of the management and daily business operations of the business. However, an individual whose personal net worth exceeds Five Hundred Thousand Dollars ($500,000.00) shall not be considered to be an economically disadvantaged individual.

From and after July 1, 2010, monies not loaned or granted by the Mississippi Development Authority to planning and development districts or qualified entities under this subsection, and monies not loaned by planning and development districts or qualified entities, shall be deposited to the credit of the sinking fund created and maintained in the State Treasury for the retirement of bonds issued under Section 69-2-19.

(c) Notwithstanding any other provision of this subsection to the contrary, if federal funds are not available for commitments made by a planning and development district to provide assistance under any federal loan program administered by the planning and development district in coordination with the Appalachian Regional Commission or Economic Development Administration, or both, a planning and development district may use funds in its loan revolving fund, which have not been committed otherwise to provide assistance, for the purpose of providing temporary funding for such commitments. If a planning and development district uses uncommitted funds in its loan revolving fund to provide such temporary funding, the district shall use funds repaid to the district under the temporarily funded federal loan program to replenish the funds used to provide the temporary funding. Funds used by a planning and development district to provide temporary funding under this paragraph (c) must be repaid to the district's loan revolving fund no later than twelve (12) months after the date the district provides the temporary funding. A planning and development district may not use uncommitted funds in its loan revolving fund to provide temporary funding under this paragraph (c) on more than two (2) occasions during a calendar year. A planning and development district may provide temporary funding for multiple commitments on each such occasion. The maximum aggregate amount of uncommitted funds in a loan revolving fund that may be used for such purposes during a calendar year shall not exceed seventy percent (70%) of the uncommitted funds in the loan revolving fund on the date the district first provides temporary funding during the calendar year.

(d) If the Mississippi Development Authority determines that a planning and development district or qualified entity has provided loans to minority businesses in a manner inconsistent with the provisions of this subsection, then the amount of such loans so provided shall be withheld by the Mississippi Development Authority from any additional grant funds to which the planning and development district or qualified entity becomes entitled under this subsection. If the Mississippi Development Authority determines, after notifying such planning and development district or qualified entity twice in writing and providing such planning and development district or qualified entity a reasonable opportunity to comply, that a planning and development district or qualified entity has consistently failed to comply with this subsection, the Mississippi Development Authority may declare such planning and development district or qualified entity in default under this subsection and, upon receipt of notice thereof from the Mississippi Development Authority, such planning and development district or qualified entity shall immediately cease providing loans under this subsection, shall refund to the Mississippi Development Authority for distribution to other planning and development districts or qualified entities all funds held in its revolving loan fund and, if required by the Mississippi Development Authority, shall convey to the Mississippi Development Authority all administrative and management control of loans provided by it under this subsection.

(e) If the Mississippi Development Authority determines, after notifying a planning and development district or qualified entity twice in writing and providing copies of such notification to each member of the Legislature in whose district or in a part of whose district such planning and development district or qualified entity is located and providing such planning and development district or qualified entity a reasonable opportunity to take corrective action, that a planning and development district or qualified entity administering a revolving loan fund under the provisions of this subsection is not actively engaged in lending as defined by the rules and regulations of the Mississippi Development Authority, the Mississippi Development Authority may declare such planning and development district or qualified entity in default under this subsection and, upon receipt of notice thereof from the Mississippi Development Authority, such planning and development district or qualified entity shall immediately cease providing loans under this subsection, shall refund to the Mississippi Development Authority for distribution to other planning and development districts or qualified entities all funds held in its revolving loan fund and, if required by the Mississippi Development Authority, shall convey to the Mississippi Development Authority all administrative and management control of loans provided by it under this subsection.

(5) The Mississippi Development Authority shall develop a program which will assist minority business enterprises by guaranteeing bid, performance and payment bonds which such minority businesses are required to obtain in order to contract with federal agencies, state agencies or political subdivisions of the state. The Mississippi Development Authority may secure letters of credit, as determined necessary by the authority, to guarantee bid, performance and payment bonds pursuant to this subsection. Monies for such program shall be drawn from the monies allocated under subsection (4) of this section to assist the financing of minority economic development and shall not exceed Three Million Dollars ($3,000,000.00) in the aggregate. The Mississippi Development Authority may promulgate rules and regulations for the operation of the program established pursuant to this subsection. For the purpose of this subsection (5), the term “minority business enterprise” has the meaning assigned such term in subsection (4) of this section.

(6) The Mississippi Development Authority may loan or grant to public entities and to nonprofit corporations funds to defray the expense of financing (or to match any funds available from other public or private sources for the expense of financing) projects in this state which are devoted to the study, teaching and/or promotion of regional crafts and which are deemed by the authority to be significant tourist attractions. The monies loaned or granted shall be drawn from the Emerging Crops Fund and shall not exceed Two Hundred Fifty Thousand Dollars ($250,000.00) in the aggregate.

(7) Through June 30, 2006, the Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce funds for the purpose of establishing loan revolving funds and other methods of financing for agribusiness programs administered under the Mississippi Agribusiness Council Act of 1993. The monies made available by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed One Million Two Hundred Thousand Dollars ($1,200,000.00) in the aggregate. The Mississippi Department of Agriculture and Commerce shall establish control and auditing procedures for use of these funds. These funds will be used primarily for quick payment to farmers for vegetable and fruit crops processed and sold through vegetable processing plants associated with the Department of Agriculture and Commerce and the Mississippi State Extension Service.

(8) From and after July 1, 1996, the Mississippi Development Authority shall make available to the Mississippi Small Farm Development Center One Million Dollars ($1,000,000.00) to be used by the center to assist small entrepreneurs as provided in Section 37-101-25, Mississippi Code of 1972. The monies made available by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund.

(9) [Repealed]

(10) The Mississippi Development Authority shall make available to the Small Farm Development Center at Alcorn State University funds in an aggregate amount not to exceed Three Hundred Thousand Dollars ($300,000.00), to be drawn from the cash balance of the Emerging Crops Fund. The Small Farm Development Center at Alcorn State University shall use such funds to make loans to producers of sweet potatoes and cooperatives anywhere in the State of Mississippi owned by sweet potato producers to assist in the planting of sweet potatoes and the purchase of sweet potato production and harvesting equipment. A report of the loans made under this subsection shall be furnished by January 15 of each year to the Chairman of the Senate Agriculture Committee and the Chairman of the House Agriculture Committee.

(11) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce "Make Mine Mississippi" program an amount not to exceed One Hundred Fifty Thousand Dollars ($150,000.00) to be drawn from the cash balance of the Emerging Crops Fund.

(12) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce an amount not to exceed

One Hundred Fifty Thousand Dollars ($150,000.00) to be drawn from the cash balance of the Emerging Crops Fund to be used for the rehabilitation and maintenance of the Mississippi Farmers Central Market in Jackson, Mississippi.

(13) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce an amount not to exceed Twenty-five Thousand Dollars ($25,000.00) to be drawn from the cash balance of the Emerging Crops Fund to be used for advertising purposes related to the Mississippi Farmers Central Market in Jackson, Mississippi.

(14)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for a program of loan guaranties to be made on behalf of any nonprofit entity qualified under Section 501(c) (3) of the Internal Revenue Code and certified by the United States Department of the Treasury as a community development financial institution for the purpose of encouraging the extension of financing to such an entity which financing the entity will use to make funds available to other entities for the purpose of making loans available in low-income communities in Mississippi. Monies to make such loan guaranties by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Two Million Dollars ($2,000,000.00) in the aggregate. The amount of a loan guaranty on behalf of such an entity under this subsection (14) shall not exceed Two Million Dollars ($2,000,000.00). Assistance received by an entity under this subsection (14) shall not disqualify the entity from obtaining any other assistance under this chapter.

(b) An entity desiring assistance under this subsection (14) must submit an application to the Mississippi Development Authority. The application must include any information required by the Mississippi Development Authority.

(c) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (14), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (14).

(15)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for a program of grants to agribusiness enterprises that process, dry, store or ship peanuts and if the enterprise has invested prior to April 17, 2009, a minimum of Six Million Dollars ($6,000,000.00) in land, facilities and equipment in this state that are utilized to process, dry, store or ship peanuts. Monies to make such grants by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed One Million Dollars ($1,000,000.00) in the aggregate. The amount of a grant under this subsection (15) shall not exceed One Million Dollars ($1,000,000.00).

(b) An entity desiring assistance under this subsection (15) must submit an application to the Mississippi Development Authority. The application must include a description of the project for which assistance is requested, the cost of the project for which assistance is requested, the amount of assistance requested and any other information required by the Mississippi Development Authority.

(c) As a condition of the receipt of a grant under this subsection (15), an entity must agree to remain in business in this state for not less than five (5) years and must meet other conditions established by the Mississippi Development Authority to ensure that the assistance results in an economic benefit to the state. The Mississippi Development Authority shall require that binding commitments be entered into requiring that:

(i) The minimum requirements provided for in this subsection (15) and the conditions established by the Mississippi Development Authority are met; and

(ii) If such commitments and conditions are not met, all or a portion of the funds provided pursuant to this subsection (15) shall be repaid.

(d) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (15), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (15).

(16)(a) The Mississippi Development Authority, in addition to the other programs described in this section, shall provide for a program of loan guaranties to be made on behalf of certain agribusinesses engaged in sweet potato growing and farming for the purpose of encouraging thereby the extension of conventional financing and the issuance of letters of credit to such agribusinesses by lenders. The amount of a loan guaranty made on behalf of such an agribusiness shall be ninety percent (90%) of the amount of assistance made available by a lender for the purposes authorized under this subsection (16). Monies to make such loan guaranties by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Seventeen Million Dollars ($17,000,000.00) in the aggregate.

(b) In order to be eligible for assistance under this subsection (16) an agribusiness must:

(i) Have been actively engaged in sweet potato growing and farming in this state before January 1, 2010;

(ii) Have incurred a disaster-related loss for sweet potato growing and farming purposes for calendar year 2009, as determined by a lender;

(iii) Agree to obtain and maintain federal Noninsured Agricultural Program (NAP) insurance coverage for the outstanding balance of any assistance received under this subsection (16); and

(iv) Satisfy underwriting criteria established by a lender related to loans under this subsection (16).

(c)(i) An entity desiring assistance under this subsection must submit an application for assistance to a lender not later than August 1, 2010. The application must include:

1. Information verifying the length of time the applicant has been actively engaged in sweet potato growing and farming in this state;

2. Information regarding the number of acres used by the applicant for sweet potato growing and farming purposes during the 2009 calendar year, as certified to by the Farm Services Authority (FSA) or the Mississippi Department of Agriculture and Commerce (MDAC), and the number of acres the applicant intends to use for such purposes during the 2010 calendar year;

3. The average cost per acre incurred by the applicant for sweet potato growing and farming purposes during the 2009 calendar year, as certified to by the FSA or MDAC, and an estimate of the average cost per acre to be incurred by the applicant for such purposes during the calendar year for which application is made;

4. The amount of assistance requested;

5. A statement from the applicant agreeing that he will obtain and maintain NAP insurance coverage for the outstanding balance of any assistance received under this subsection (16); and

6. Any other information required by the lender and/or the MDA.

(ii) The lender shall review the application for assistance and determine whether the applicant qualifies for assistance under this subsection (16). If the lender determines that the applicant qualifies for assistance, the lender shall loan funds to the applicant subject to the provisions of this subsection (16).

(d) Loans made under this subsection (16) shall be subject to the following conditions:

(i) The maximum amount of a loan to a borrower shall not exceed One Thousand Seven Hundred Dollars ($1,700.00) per acre and shall exclude any machinery and equipment costs.

(ii) The proceeds of a loan may be used only for paying a borrower's sweet potato planting, production and harvesting costs, excluding machinery and equipment costs.

(iii) The proceeds of a loan may not be used to repay, satisfy or finance existing debt.

(iv) The time allowed for repayment of a loan shall not be more than five (5) years, and there shall be no penalty, fee or other charge imposed for the prepayment of a loan.

(e) The receipt of assistance by a person or other entity under any other program described in this section shall not disqualify the person or entity from obtaining a loan under the program established in this subsection (16) if the person or entity is otherwise eligible under this program. In addition, the receipt of a loan by a person or other entity under the program established under this subsection (16) shall not disqualify the person or entity from obtaining assistance under any other program described in this section.

(f) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (16), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (16).

[From and after July 1, 2014, this section shall read as follows:]

(1) There is hereby established in the State Treasury a fund to be known as the "Emerging Crops Fund," which shall be used to pay the interest on loans made to farmers for nonland capital costs of establishing production of emerging crops on land in Mississippi, and to make loans and grants which are authorized under this section to be made from the fund. The fund shall be administered by the Mississippi Development Authority. A board comprised of the directors of the authority, the Mississippi Cooperative Extension Service, the Mississippi Small Farm Development Center and the Mississippi Agricultural and Forestry Experiment Station, or their designees, shall develop definitions, guidelines and procedures for the implementation of this chapter. Funds for the Emerging Crops Fund shall be provided from the issuance of bonds or notes under Sections 69-2-19 through 69-2-37 and from repayment of interest loans made from the fund.

(2)(a) The Mississippi Development Authority shall develop a program which gives fair consideration to making loans for the processing and manufacturing of goods and services by agribusiness, greenhouse production horticulture, and small business concerns. It is the policy of the State of Mississippi that the Mississippi Development Authority shall give due recognition to and shall aid, counsel, assist and protect, insofar as is possible, the interests of agribusiness, greenhouse production horticulture, and small business concerns. To ensure that the purposes of this subsection are carried out, the Mississippi Development Authority shall loan not more than One Million Dollars ($1,000,000.00) to finance any single agribusiness, greenhouse production horticulture, or small business concern. Loans made pursuant to this subsection shall be made in accordance with the criteria established in Section 57-71-11.

(b) The Mississippi Development Authority may, out of the total amount of bonds authorized to be issued under this chapter, make available funds to any planning and development district in accordance with the criteria established in Section 57-71-11. Planning and development districts which receive monies pursuant to this provision shall use such monies to make loans to private companies for purposes consistent with this subsection.

(c) The Mississippi Development Authority is hereby authorized to engage legal services, financial advisors, appraisers and consultants if needed to review and close loans made hereunder and to establish and assess reasonable fees including, but not limited to, liquidation expenses.

(3) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for a program of loans to be made to agribusiness or greenhouse production horticulture enterprises for the purpose of encouraging thereby the extension of conventional financing and

the issuance of letters of credit to such agribusiness or greenhouse production horticulture enterprises by private institutions. Monies to make such loans by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund. The amount of a loan to any single agribusiness or greenhouse production horticulture enterprise under this subsection (3) shall not exceed twenty percent (20%) of the total cost of the project for which financing is sought or Two Hundred Thousand Dollars ($200,000.00), whichever is less. No interest shall be charged on such loans, and only the amount actually loaned shall be required to be repaid. Repayments shall be deposited into the Emerging Crops Fund. The Mississippi Development Authority also may make loans under this subsection (3) to agribusinesses engaged in poultry production operations for the purpose of assisting such agribusinesses to make upgrades, renovations, repairs and other improvements to their equipment, facilities and operations, which shall not exceed a total cost of Two Hundred Thousand Dollars ($200,000.00) of the ending cash balance, and the amount of a loan to any single agribusiness for the retrofitting of poultry houses shall not exceed thirty percent (30%) of the total cost of the project for which financing is sought. No interest shall be charged on such loans, and only the amount actually loaned shall be required to be repaid.

(4)(a) Through June 30, 2010, the Mississippi Development Authority may loan or grant to qualified planning and development districts, and to small business investment corporations, bank-based community development corporations, the Recruitment and Training Program, Inc., the City of Jackson Business Development Loan Fund, the Lorman Southwest Mississippi Development Corporation, the West Jackson Community Development Corporation, the East Mississippi Development Corporation, and other entities meeting the criteria established by the Mississippi Development Authority (all referred to hereinafter as "qualified entities"), funds for the purpose of establishing loan revolving funds to assist in providing financing for minority economic development. The monies loaned or granted by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Twenty-nine Million Dollars ($29,000,000.00) in the aggregate. Planning and development districts or qualified entities which receive monies pursuant to this provision shall use such monies to make loans to minority business enterprises consistent with criteria established by the Mississippi Development Authority. Such criteria shall include, at a minimum, the following:

(i) The business enterprise must be a private, for-profit enterprise.

(ii) If the business enterprise is a proprietorship, the borrower must be a resident citizen of the State of Mississippi; if the business enterprise is a corporation or partnership, at least fifty percent (50%) of the owners must be resident citizens of the State of Mississippi.

(iii) The borrower must have at least five percent (5%) equity interest in the business enterprise.

(iv) The borrower must demonstrate ability to repay the loan.

(v) The borrower must not be in default of any previous loan from the state or federal government.

(vi) Loan proceeds may be used for financing all project costs associated with development or expansion of a new small business, including fixed assets, working capital, start-up costs, rental payments, interest expense during construction and professional fees related to the project.

(vii) Loan proceeds shall not be used to pay off existing debt for loan consolidation purposes; to finance the acquisition, construction, improvement or operation of real property which is to be held primarily for sale or investment; to provide for, or free funds, for speculation in any kind of property; or as a loan to owners, partners or stockholders of the applicant which do not change ownership interest by the applicant. However, this does not apply to ordinary compensation for services rendered in the course of business.

(viii) The maximum amount that may be loaned to any one borrower shall be Two Hundred Fifty Thousand Dollars ($250,000.00).

(ix) The Mississippi Development Authority shall review each loan before it is made, and no loan shall be made to any borrower until the loan has been reviewed and approved by the Mississippi Development Authority.

(b) For the purpose of this subsection, the term "minority business enterprise" means a socially and economically disadvantaged small business concern, organized for profit, performing a commercially useful function which is owned and controlled by one or more minorities or minority business enterprises certified by the Mississippi Development Authority, at least fifty percent (50%) of whom are resident citizens of the State of Mississippi. Except as otherwise provided, for purposes of this subsection, the term "socially and economically disadvantaged small business concern" shall have the meaning ascribed to such term under the Small Business Act (15 USCS, Section 637(a)), or women, and the term "owned and controlled" means a business in which one or more minorities or minority business enterprises certified by the Mississippi Development Authority own sixty percent (60%) or, in the case of a corporation, sixty percent (60%) of the voting stock, and control sixty percent (60%) of the management and daily business operations of the business. However, an individual whose personal net worth exceeds Five Hundred Thousand Dollars ($500,000.00) shall not be considered to be an economically disadvantaged individual.

From and after July 1, 2010, monies not loaned or granted by the Mississippi Development Authority to planning and development districts or qualified entities under this subsection, and monies not loaned by planning and development districts or qualified entities, shall be deposited to the credit of the sinking fund created and maintained in the State Treasury for the retirement of bonds issued under Section 69-2-19.

(c) Notwithstanding any other provision of this subsection to the contrary, if federal funds are not available for commitments made by a planning and development district to provide assistance under any federal loan program administered by the planning and development district in coordination with the Appalachian Regional Commission or Economic Development Administration, or both, a planning and development district may use funds in its loan revolving fund, which have not been committed otherwise to provide assistance, for the purpose of providing temporary funding for such commitments. If a planning and development district uses uncommitted funds in its loan revolving fund to provide such temporary funding, the district shall use funds repaid to the district under the temporarily funded federal loan program to replenish the funds used to provide the temporary funding. Funds used by a planning and development district to provide temporary funding under this paragraph (c) must be repaid to the district's loan revolving fund no later than twelve (12) months after the date the district provides the temporary funding. A planning and development district may not use uncommitted funds in its loan revolving fund to provide temporary funding under this paragraph (c) on more than two (2) occasions during a calendar year. A planning and development district may provide temporary funding for multiple commitments on each such occasion. The maximum aggregate amount of uncommitted funds in a loan revolving fund that may be used for such purposes during a calendar year shall not exceed seventy percent (70%) of the uncommitted funds in the loan revolving fund on the date the district first provides temporary funding during the calendar year.

(d) If the Mississippi Development Authority determines that a planning and development district or qualified entity has provided loans to minority businesses in a manner inconsistent with the provisions of this subsection, then the amount of such loans so provided shall be withheld by the Mississippi Development Authority from any additional grant funds to which the planning and development district or qualified entity becomes entitled under this subsection. If the Mississippi Development Authority determines, after notifying such planning and development district or qualified entity twice in writing and providing such planning and development district or qualified entity a reasonable opportunity to comply, that a planning and development district or qualified entity has consistently failed to comply with this subsection, the Mississippi Development Authority may declare such planning and development district or qualified entity in default under this subsection and, upon receipt of notice thereof from the Mississippi Development Authority, such planning and development district or qualified entity shall immediately cease providing loans under this subsection, shall refund to the Mississippi Development Authority for distribution to other planning and development districts or qualified entities all funds held in its revolving loan fund and, if required by the Mississippi Development Authority, shall convey to the Mississippi Development Authority all administrative and management control of loans provided by it under this subsection.

(e) If the Mississippi Development Authority determines, after notifying a planning and development district or qualified entity twice in writing and providing copies of such notification to each member of the Legislature in whose district or in a part of whose district such planning and development district or qualified entity is located and providing such planning and development district or qualified entity a reasonable opportunity to take corrective action, that a planning and development district or qualified entity administering a revolving loan fund under the provisions of this subsection is not actively engaged in lending as defined by the rules and regulations of the Mississippi Development Authority, the Mississippi Development Authority may declare such planning and development district or qualified entity in default under this subsection and, upon receipt of notice thereof from the Mississippi Development Authority, such planning and development district or qualified entity shall immediately cease providing loans under this subsection, shall refund to the Mississippi Development Authority for distribution to other planning and development districts or qualified entities all funds held in its revolving loan fund and, if required by the Mississippi Development Authority, shall convey to the Mississippi Development Authority all administrative and management control of loans provided by it under this subsection.

(5) The Mississippi Development Authority shall develop a program which will assist minority business enterprises by guaranteeing bid, performance and payment bonds which such minority businesses are required to obtain in order to contract with federal agencies, state agencies or political subdivisions of the state. The Mississippi Development Authority may secure letters of credit, as determined necessary by the authority, to guarantee bid, performance and payment bonds pursuant to this subsection. Monies for such program shall be drawn from the monies allocated under subsection (4) of this section to assist the financing of minority economic development and shall not exceed Three Million Dollars ($3,000,000.00) in the aggregate. The Mississippi Development Authority may promulgate rules and regulations for the operation of the program established pursuant to this subsection. For the purpose of this subsection (5), the term “minority business enterprise” has the meaning assigned such term in subsection (4) of this section.

(6) The Mississippi Development Authority may loan or grant to public entities and to nonprofit corporations funds to defray the expense of financing (or to match any funds available from other public or private sources for the expense of financing) projects in this state which are devoted to the study, teaching and/or promotion of regional crafts and which are deemed by the authority to be significant tourist attractions. The monies loaned or granted shall be drawn from the Emerging Crops Fund and shall not exceed Two Hundred Fifty Thousand Dollars ($250,000.00) in the aggregate.

(7) Through June 30, 2006, the Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce funds for the purpose of establishing loan revolving funds and other methods of financing for agribusiness programs administered under the Mississippi Agribusiness Council Act of 1993. The monies made available by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed One Million Two Hundred Thousand Dollars ($1,200,000.00) in the aggregate. The Mississippi Department of Agriculture and Commerce shall establish control and auditing procedures for use of these

funds. These funds will be used primarily for quick payment to farmers for vegetable and fruit crops processed and sold through vegetable processing plants associated with the Department of Agriculture and Commerce and the Mississippi State Extension Service.

(8) From and after July 1, 1996, the Mississippi Development Authority shall make available to the Mississippi Small Farm Development Center One Million Dollars ($1,000,000.00) to be used by the center to assist small entrepreneurs as provided in Section 37-101-25, Mississippi Code of 1972. The monies made available by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund.

(9) [Repealed]

(10) The Mississippi Development Authority shall make available to the Small Farm Development Center at Alcorn State University funds in an aggregate amount not to exceed Three Hundred Thousand Dollars ($300,000.00), to be drawn from the cash balance of the Emerging Crops Fund. The Small Farm Development Center at Alcorn State University shall use such funds to make loans to producers of sweet potatoes and cooperatives anywhere in the State of Mississippi owned by sweet potato producers to assist in the planting of sweet potatoes and the purchase of sweet potato production and harvesting equipment. A report of the loans made under this subsection shall be furnished by January 15 of each year to the Chairman of the Senate Agriculture Committee and the Chairman of the House Agriculture Committee.

(11) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce "Make Mine Mississippi" program an amount not to exceed One Hundred Fifty Thousand Dollars ($150,000.00) to be drawn from the cash balance of the Emerging Crops Fund.

(12) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce an amount not to exceed One Hundred Fifty Thousand Dollars ($150,000.00) to be drawn from the cash balance of the Emerging Crops Fund to be used for the rehabilitation and maintenance of the Mississippi Farmers Central Market in Jackson, Mississippi.

(13) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce an amount not to exceed Twenty-five Thousand Dollars ($25,000.00) to be drawn from the cash balance of the Emerging Crops Fund to be used for advertising purposes related to the Mississippi Farmers Central Market in Jackson, Mississippi.

(14)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for a program of loan guaranties to be made on behalf of any nonprofit entity qualified under Section 501(c) (3) of the Internal Revenue Code and certified by the United States Department of the Treasury as a community development financial institution for the purpose of encouraging the extension of financing to such an entity which financing the entity will use to make funds available to other entities for the purpose of making loans available in low-income communities in Mississippi. Monies to make such loan guaranties by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Two Million Dollars ($2,000,000.00) in the aggregate. The amount of a loan guaranty on behalf of such an entity under this subsection (14) shall not exceed Two Million Dollars ($2,000,000.00). Assistance received by an entity under this subsection (14) shall not disqualify the entity from obtaining any other assistance under this chapter.

(b) An entity desiring assistance under this subsection (14) must submit an application to the Mississippi Development Authority. The application must include any information required by the Mississippi Development Authority.

(c) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (14), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (14).

(15)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for a program of grants to agribusiness enterprises that process, dry, store or ship peanuts and if the enterprise has invested prior to April 17, 2009, a minimum of Six Million Dollars ($6,000,000.00) in land, facilities and equipment in this state that are utilized to process, dry, store or ship peanuts. Monies to make such grants by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed One Million Dollars ($1,000,000.00) in the aggregate. The amount of a grant under this subsection (15) shall not exceed One Million Dollars ($1,000,000.00).

(b) An entity desiring assistance under this subsection (15) must submit an application to the Mississippi Development Authority. The application must include a description of the project for which assistance is requested, the cost of the project for which assistance is requested, the amount of assistance requested and any other information required by the Mississippi Development Authority.

(c) As a condition of the receipt of a grant under this subsection (15), an entity must agree to remain in business in this state for not less than five (5) years and must meet other conditions established by the Mississippi Development Authority to ensure that the assistance results in an economic benefit to the state. The Mississippi Development Authority shall require that binding commitments be entered into requiring that:

(i) The minimum requirements provided for in this subsection (15) and the conditions established by the Mississippi Development Authority are met; and

(ii) If such commitments and conditions are not met, all or a portion of the funds provided pursuant to this subsection (15) shall be repaid.

(d) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (15), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (15).

(16)(a) The Mississippi Development Authority, in addition to the other programs described in this section, shall provide for a program of loan guaranties to be made on behalf of certain agribusinesses engaged in sweet potato growing and farming for the purpose of encouraging thereby the extension of conventional financing and the issuance of letters of credit to such agribusinesses by lenders. The amount of a loan guaranty made on behalf of such an agribusiness shall be ninety percent (90%) of the amount of assistance made available by a lender for the purposes authorized under this subsection (16). Monies to make such loan guaranties by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Seventeen Million Dollars ($17,000,000.00) in the aggregate.

(b) In order to be eligible for assistance under this subsection (16) an agribusiness must:

(i) Have been actively engaged in sweet potato growing and farming in this state before January 1, 2010;

(ii) Have incurred a disaster-related loss for sweet potato growing and farming purposes for calendar year 2009, as determined by a lender;

(iii) Agree to obtain and maintain federal Noninsured Agricultural Program (NAP) insurance coverage for the outstanding balance of any assistance received under this subsection (16); and

(iv) Satisfy underwriting criteria established by a lender related to loans under this subsection (16).

(c)(i) An entity desiring assistance under this subsection must submit an application for assistance to a lender not later than August 1, 2010. The application must include:

1. Information verifying the length of time the applicant has been actively engaged in sweet potato growing and farming in this state;

2. Information regarding the number of acres used by the applicant for sweet potato growing and farming purposes during the 2009 calendar year, as certified to by the Farm Services Authority (FSA) or the Mississippi Department of Agriculture and Commerce (MDAC), and the number of acres the applicant intends to use for such purposes during the 2010 calendar year;

3. The average cost per acre incurred by the applicant for sweet potato growing and farming purposes during the 2009 calendar year, as certified to by the FSA or MDAC, and an estimate of the average cost per acre to be incurred by the applicant for such purposes during the calendar year for which application is made;

4. The amount of assistance requested;

5. A statement from the applicant agreeing that he will obtain and maintain NAP insurance coverage for the outstanding balance of any assistance received under this subsection (16); and

6. Any other information required by the lender and/or the MDA.

(ii) The lender shall review the application for assistance and determine whether the applicant qualifies for assistance under this subsection (16). If the lender determines that the applicant qualifies for assistance, the lender shall loan funds to the applicant subject to the provisions of this subsection (16).

(d) Loans made under this subsection (16) shall be subject to the following conditions:

(i) The maximum amount of a loan to a borrower shall not exceed One Thousand Seven Hundred Dollars ($1,700.00) per acre and shall exclude any machinery and equipment costs.

(ii) The proceeds of a loan may be used only for paying a borrower's sweet potato planting, production and harvesting costs, excluding machinery and equipment costs.

(iii) The proceeds of a loan may not be used to repay, satisfy or finance existing debt.

(iv) The time allowed for repayment of a loan shall not be more than five (5) years, and there shall be no penalty, fee or other charge imposed for the prepayment of a loan.

(e) The receipt of assistance by a person or other entity under any other program described in this section shall not disqualify the person or entity from obtaining a loan under the program established in this subsection (16) if the person or entity is otherwise eligible under this program. In addition, the receipt of a loan by a person or other entity under the program established under this subsection (16) shall not disqualify the person or entity from obtaining assistance under any other program described in this section.

(f) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (16), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (16).

SOURCES: Laws, 1987, ch. 482, § 7; Laws, 1988, ch. 580, § 19; Laws, 1989, ch. 524, § 29; Laws, 1990, ch. 570, § 18; Laws, 1991, ch. 584, § 6,; Laws, 1992, ch. 548, § 11; Laws, 1993, ch. 548, § 8; Laws, 1993, ch. 619, § 9; Laws, 1994, ch. 560, § 4; Laws, 1995, ch. 548, § 10; Laws, 1996, ch. 553, § 5; Laws, 1997, ch. 582, § 1; Laws, 1998, ch. 536, § 9; Laws, 2000, ch. 584, § 4; Laws, 2000, ch. 620, § 1; Laws, 2001, ch. 540, § 1; Laws, 2002, ch. 536, § 1; Laws, 2003, ch. 504, § 1; Laws, 2004, ch. 360, § 1; Laws, 2004, 3rd Ex Sess, ch. 1, § 95; Laws, 2006, ch. 564, § 1; Laws, 2007, ch. 586, § 1; Laws, 2008, ch. 506, § 6; Laws, 2009, ch. 557, § 31; Laws, 2010, ch. 429, § 1; Laws, 2010, ch. 511, § 27; Laws, 2011, ch. 420, § 1; Laws, 2012, ch. 415, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 4 of ch. 584, Laws, 2000, effective from and after its passage (approved May 20, 2000), amended this section. Section 1 of ch. 620, Laws, 2000, effective July 1, 2000, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 620, Laws, 2000, pursuant to

Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Section 1 of ch. 309, Laws, 2003, effective from and after passage (approved March 7, 2003), amended this section. Section 1 of ch. 504, Laws, 2003, effective from and after passage (approved April 15, 2003), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 504, Laws 2003, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the later approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 27 of ch. 511, Laws of 2010, effective upon passage (approved April 13, 2010), amended this section. Section 1 of ch. 429, Laws of 2010, effective upon passage (approved March 24, 2010), also amended this section. As set out above, this section reflects the language of Section 27 of ch. 511, Laws of 2010, which contains language that specifically provides that it supersedes § 69-2-13 as amended by Laws of 2010, ch. 429.

Editor's Note — Laws, 1989, ch. 524, § 36, provides as follows:

"SECTION 36. The repeal or amendment of this act shall not reduce the terms of any tax reduction, special tax incentive or financial assistance agreed upon pursuant to official action by the Department of Economic Development, the State Tax Commission or other appropriate agency of the state or political subdivision thereof prior to the effective date of such repeal or amendment."

Laws, 1990, ch. 570, § 20, effective July 1, 1990, provides as follows:

"SECTION 20. (1) Any attorney's fees paid as the result of the issuance of bonds under this act shall be in compliance with the limits on attorney's fees for bond issues as adopted by the State Bond Commission. Attorney's fees paid as the result of the issuance of bonds under this act shall be subject to negotiation but in no event shall exceed the limits established by the State Bond Commission. A detailed accounting of all expenses incurred by all persons, firms, corporations, associations or other organizations involved in such bond issues shall be submitted to the State Bond Commission within ninety (90) days after the issuance of such bonds and shall be a matter of public record.

"(2) No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or appointed official, shall derive any income from the issuance of any bonds or the disposition of any property under this act contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

"(3) In connection with the issuance and sale of bonds authorized under this act, the State Bond Commission shall select a bond attorney or attorneys who are listed in the "Directory of Municipal Bond Dealers of the United States" and who are members in good standing of the Mississippi State Bar Association and licensed to practice law in the State of Mississippi; however, upon a finding by the commission spread on its official minutes that the public interest will best be served thereby, the commission may select any bond attorney or attorneys listed in the 'Directory of Municipal Bond Dealers of the United States.' "

Section 637(a) of 15 USCS referred to in this section was repealed by Act May 2, 1966, P. L. 89-409, § 3(b), 80 Stat. 133, effective July 1, 1966. For similar provisions, see 15 USCS § 636(e).

Laws, 2004, 3rd Ex Sess, ch. 1, § 228 provides:

"SECTION 228. Except as otherwise provided in this act, any entity using funds authorized and made available under Chapter 1, 2004 Third Extraordinary Session, is authorized, in its discretion, to set aside not more than twenty percent (20%) of such funds for expenditure with small business concerns owned and controlled by socially and economically disadvantaged individuals. The term "socially and economically disadvantaged individuals" shall have the meaning ascribed to such term under Section 8(d) of the Small Business Act (15 USCS, Section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section."

Subsection (9) was repealed by its own terms, effective June 30, 2006.

Amendment Notes — The first 2010 amendment (ch. 429) added (16).

The second 2010 amendment (ch. 511), in (16)(c)(i)(2), inserted "or the Mississippi Department of Agriculture and Commerce (MDAC)"; in (16)(c)(i)(3), inserted "or MDAC" and substituted "the calendar year for which application is made" for "the 2010 calendar year"; rewrote (16)(d)(i); and substituted "more than" for "less than" in (16)(d)(iv).

The 2011 amendment provided for two versions of the section. In the first version, effective through June 30, 2013, rewrote (3).

The 2012 amendment provided for two versions of the section. In the first version substituted "June 30, 2014" for "June 30, 2013" in the bracketed effective date language, and in the second version, substituted "July 1, 2014" for "July 1, 2013" in the bracketed effective date language.

Cross References — Mississippi Cooperative Extension Service, see § 19-5-63.

Mississippi Administrative Procedure Law, see §§ 25-43-1.101 et seq.

Mississippi Agricultural and Forestry Experiment Station, see § 37-113-17.

Mississippi Department of Economic and Community Development, see § 57-1-1 et seq.

Conferring of powers necessary to carry out provisions of §§ 69-2-13 through 69-2-37, see § 69-2-39.

Savings clause effective upon declaration of invalidity of any portion of §§ 69-2-13 through 69-2-39, see § 69-2-41.

Proceeds of additional bonds issued under §§ 69-2-19 through 69-2-39 to be used solely for the purposes described in subsection (16) of this section, see § 69-2-19.

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The issuance of a written loan commitment, without lending money and creating a debtor-creditor relationship, does not constitute a loan, and the provisions of subsection (4) of this section requiring deposit in the State Treasury of monies not loaned or granted are applicable to any funds held pursuant thereto by the Mississippi Business Finance Corporation (MBFC) as of July 1, 1999; thus, MBFC will be in violation of such sunset provisions if it holds monies for the purpose of funding the loans or grants after June 30, 1999. Pumphrey, June 4, 1999, A.G. Op. #99-0271.

Subsection (4) of this section permits Mississippi Business Finance Corporation to make a grant of funds to qualified lending entities which have made minority business enterprise loans funded with repayments from previous loans, so long as the minority business loans for which the grant is made meet the requirements of subsection (4) of this section. Pumphrey, June 4, 1999, A.G. Op. #99-0271.

A letter of credit arrangement goes beyond the authority granted to Mississippi Development Authority, express or necessarily implied, by subsection (5) of this section. Speed, Jan. 28, 2005, A.G. Op. 04-0640.

§ 69-2-15. Interest loans from Emerging Crops Fund.

(1) Any lender which has made a loan to a farmer to finance the nonland capital costs of establishing production of an emerging crop on land in

Mississippi may make application to the department for payment of the interest on the loan during the period from beginning of production to harvest or initial sale of the product, which payment shall be made from the fund. The maximum amount of interest loans from the fund for the benefit of any one (1) farmer shall be Fifty Thousand Dollars ($50,000.00). During the period that the department pays the interest on a loan, the maximum rate of interest which may be charged on the loan by the lender shall be four percent (4%) per annum above the New York prime rate. By payment of the interest on a loan, neither the department nor the State of Mississippi shall be a guarantor of the loan, but the state shall have a lien junior to any lien that the lender may have on the loan.

(2) If a farmer defaults on the interest loan the Attorney General of the State of Mississippi shall take the necessary legal action, as soon as practicable, to recover the monies due and owing to the State of Mississippi. A suit against a defaulting party under this section may be brought in the county in which the lender is located, or in any Hinds County court.

SOURCES: Laws, 1987, ch. 482, § 8; Laws, 1988, ch. 356, § 2, eff from and after passage (approved April 15, 1988).

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 11, 12, 19 et seq.

CJS. 3 C.J.S., Agriculture §§ 72, 73.

§ 69-2-17. Repayment of interest loans from Emerging Crops Fund.

(1) Repayment of the interest loan from the fund shall be deferred for a period of time not more than five (5) years or the time when the emerging crop should reach maturity. The schedule for repayment of the interest loan shall be a period of time equal to two (2) times the period that interest is paid on the loan for that emerging crop from the fund. No interest shall be charged on interest loans from the fund, and only the amount actually loaned from the fund shall be required to be repaid.

(2) Repayment of interest loans from the fund shall be made to the lender, which shall remit the amounts collected to the department for deposit into the fund. However, if the repayment period for an interest loan exceeds the time for repayment of the principal loan amount to the lender, when the final principal payment is made to the lender all subsequent interest loan payments shall be made by the farmer, directly to the department to be deposited into the fund.

(3) The lender shall notify the department, as soon as possible, of any change in the principal loan status, release of collateral or any other matter that may adversely affect the security of the state's loan.

SOURCES: Laws, 1987, ch. 482, § 9; Laws, 1988, ch. 356, § 3, eff from and after passage (approved April 15, 1988).

§ 69-2-19. Issuance of general obligation bonds for Emerging Crops Fund; limit on amount of bonds issued.

[Until June 30, 2014, this section shall read as follows:]

(1) The Mississippi Development Authority is authorized, at one time, or from time to time, to declare by resolution the necessity for issuance of negotiable general obligation bonds of the State of Mississippi to provide funds for the Emerging Crops Fund established in Section 69-2-13. Upon the adoption of a resolution by the board, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by Sections 69-2-19 through 69-2-39, the authority shall deliver a certified copy of its resolution or resolutions to the State Bond Commission. Upon receipt of same, the State Bond Commission, in its discretion, shall act as the issuing agent, prescribe the form of the bonds, determine the appropriate method for sale of the bonds, advertise for and accept bids or negotiate the sale of the bonds, issue and sell the bonds so authorized to be sold, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The amount of bonds issued under Sections 69-2-19 through 69-2-39 shall not exceed One Hundred Nine Million Dollars ($109,000,000.00) in the aggregate; however:

(a) An additional amount of bonds may be issued under Sections 69-2-19 through 69-2-39 in an amount not to exceed Two Million Dollars ($2,000,000.00), and the proceeds of any such additional bonds shall be used solely for the purposes described in Section 69-2-13(14); and

(b) An additional amount of bonds may be issued under Sections 69-2-19 through 69-2-39 in an amount not to exceed Seventeen Million Dollars ($17,000,000.00), and the proceeds of such additional bonds shall be used solely for the purposes described in Section 69-2-13(16).

(2) No bonds may be issued under Sections 69-2-19 through 69-2-39 after October 1, 2019.

[From and after July 1, 2014, this section shall read as follows:]

(1) The Mississippi Development Authority is authorized, at one time, or from time to time, to declare by resolution the necessity for issuance of negotiable general obligation bonds of the State of Mississippi to provide funds for the Emerging Crops Fund established in Section 69-2-13. Upon the adoption of a resolution by the board, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by Sections 69-2-19 through 69-2-39, the authority shall deliver a certified copy of its resolution or resolutions to the State Bond Commission. Upon receipt of same, the State Bond Commission, in its discretion, shall act as the issuing agent, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The amount of bonds issued under Sections 69-2-19 through 69-2-39 shall not exceed One Hundred Nine Million Dollars ($109,000,000.00) in the aggregate; however:

(a) An additional amount of bonds may be issued under Sections 69-2-19 through 69-2-39 in an amount not to exceed Two Million Dollars ($2,000,000.00), and the proceeds of any such additional bonds shall be used solely for the purposes described in Section 69-2-13(14); and

(b) An additional amount of bonds may be issued under Sections 69-2-19 through 69-2-39 in an amount not to exceed Seventeen Million Dollars ($17,000,000.00), and the proceeds of such additional bonds shall be used solely for the purposes described in Section 69-2-13(16).

(2) No bonds may be issued under Sections 69-2-19 through 69-2-39 after October 1, 2019.

SOURCES: Laws, 1987, ch. 482, § 10; Laws, 1990, ch. 570, § 19; Laws, 1991, ch. 538, § 1; Laws, 1992, ch. 507, § 1; Laws, 1993, ch. 548, § 9; Laws, 1993 Ex Sess, ch. 1, § 1; Laws, 1995, ch. 548, § 11; Laws, 1996, ch. 553, § 6; Laws, 1998, ch. 536, § 10; Laws, 2000, ch. 584, § 5; Laws, 2001, ch. 540, § 2; Laws, 2002, ch. 541, § 8; Laws, 2003, ch. 504, § 2; Laws, 2004, 3rd Ex Sess, ch. 1, § 96; Laws, 2007, ch. 586, § 2; Laws, 2008, ch. 506, § 7; Laws, 2009, ch. 557, § 32; Laws, 2010, ch. 429, § 2; Laws, 2011, ch. 431, § 6, eff from and after passage (approved Mar. 16, 2011.)

Editor's Note — Laws, 1990, ch. 570, § 20, effective July 1, 1990, provides as follows:

"SECTION 20. (1) Any attorney's fees paid as the result of the issuance of bonds under this act shall be in compliance with the limits on attorney's fees for bond issues as adopted by the State Bond Commission. Attorney's fees paid as the result of the issuance of bonds under this act shall be subject to negotiation but in no event shall exceed the limits established by the State Bond Commission. A detailed accounting of all expenses incurred by all persons, firms, corporations, associations or other organizations involved in such bond issues shall be submitted to the State Bond Commission within ninety (90) days after the issuance of such bonds and shall be a matter of public record.

"(2) No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or appointed official, shall derive any income from the issuance of any bonds or the disposition of any property under this act contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

"(3) In connection with the issuance and sale of bonds authorized under this act, the State Bond Commission shall select a bond attorney or attorneys who are listed in the "Directory of Municipal Bond Dealers of the United States" and who are members in good standing of the Mississippi State Bar Association and licensed to practice law in the State of Mississippi; however, upon a finding by the commission spread on its official minutes that the public interest will best be served thereby, the commission may select any bond attorney or attorneys listed in the 'Directory of Municipal Bond Dealers of the United States.' "

Laws, 2004, 3rd Ex Sess, ch. 1, § 228 provides:

"SECTION 228. Except as otherwise provided in this act, any entity using funds authorized and made available under Chapter 1, 2004 Third Extraordinary Session, is authorized, in its discretion, to set aside not more than twenty percent (20%) of such funds for expenditure with small business concerns owned and controlled by socially and economically disadvantaged individuals. The term "socially and economically disadvantaged individuals" shall have the meaning ascribed to such term under Section 8(d) of the Small Business Act (15 USCS, Section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section."

Amendment Notes — The 2010 amendment added the (1)(a) designation and (1)(b). The 2011 amendment substituted "Until June 30, 2014," for "Until June 30, 2011," in the bracketed language of the first version; and substituted "From and after July 1, 2014" for "From and after July 1, 2011," in the bracketed language of the second version.

Cross References — State Bond Commission, see §§ 31-17-1, 31-17-3.

Department of Economic and Community Development, see § 57-1-1 et seq.

Use of bonds issued under sections 69-2-19 through 69-2-37 of this chapter to provide funds for Emerging Crops Fund, see § 69-2-13.

Interest and interest rates on general obligation bonds issued under sections 69-2-19 through 69-2-39 of this chapter, see § 69-2-25.

Authorization and procedures for borrowing funds for the Emerging Crops Fund in lieu of issuing bonds, see § 69-2-30.

Attorney General's representation of department with respect to bonds issued under §§ 69-2-19 through 69-2-39, see § 69-2-33.

Provision that bonds issued under this chapter shall be legal investments for banks and other entities, see § 69-2-35.

Authority for issuance of bonds under §§ 69-2-19 through 69-2-39, as well as exemption from limitations generally imposed on state obligations, see § 69-2-39.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 33.

CJS. 3 C.J.S., Agriculture §§ 24, 25.

§ 69-2-21. Full faith, credit, and taxing power of state pledged to payment of bonds.

For the payment of such bonds and the interest thereon, the full faith, credit, and taxing power of the State of Mississippi are hereby irrevocably pledged. If the Legislature finds that there are sufficient funds available in the General Fund of the State Treasury to pay maturing principal and accruing interest of the bonds, and if the Legislature appropriates such available funds for the purpose of paying such maturing principal and accruing interest, then the maturing principal and accruing interest of the bonds shall be paid from appropriations made by the Legislature from the General Fund of the State Treasury. However, if there are not sufficient funds available in the General Fund of the State Treasury to pay the maturing principal and accruing interest of the bonds, or if such funds are available but the Legislature fails to appropriate a sufficient amount thereof to pay such maturing principal and accruing interest as the same becomes due, then there shall be levied annually upon all taxable property in the State of Mississippi an ad valorem tax at the rate sufficient to provide the funds required to pay the bonds at maturity and the interest on the bonds as it accrues.

SOURCES: Laws, 1987, ch. 482, § 11, eff from and after passage (approved April 15, 1987).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Application of this section to the borrowing of funds to fund the Emerging Crops Fund, see § 69-2-30.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 22.

§ 69-2-23. Execution, delivery, conversion, redemption, and sale of general obligation bonds.

[Until June 30, 2014, this section shall read as follows:]

Such bonds may be executed and delivered by the state at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in fully registered form or in bearer form registrable either as to principal or interest, or both, may bear such conversion privileges and be payable in such installments and at such time or times not exceeding twenty (20) years from the date thereof, may be payable at such place or places, whether within or without the State of Mississippi, may bear interest payable at such time or times and at such place or places and evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the State Bond Commission under which the bonds are authorized to be issued. Such bonds shall not bear a greater overall maximum interest rate to maturity than that authorized by law for general obligation bonds. If deemed advisable by the State Bond Commission, there may be retained in the proceedings under which any such bonds are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and briefly recited or referred to on the face of the bonds, but nothing herein contained shall be construed to confer on the state any right or option to redeem any bonds, except as may be provided in the proceedings under which they shall be issued. The State Bond Commission may sell such bonds on sealed bids at public sale or may negotiate the sale of the bonds for such price as the State Bond Commission determines to be in the best interest of the State of Mississippi. The state may pay all expenses, premiums and commissions which the State Bond Commission may deem necessary or advantageous in connection with the issuance thereof, but solely from the proceeds of the bonds. The issuance by the state of one or more series of bonds shall not preclude it from issuing other series of bonds, but the proceedings under which any subsequent bonds may be issued shall recognize and protect any prior pledge made for any prior issuance of bonds.

[From and after July 1, 2014, this section shall read as follows:]

Such bonds may be executed and delivered by the state at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in fully registered form or in bearer form registrable either as to principal or interest, or both, may bear such conversion privileges and be payable in such installments and at such time or times not exceeding twenty (20) years from the date thereof, may be payable at such place or places, whether within or without the State of Mississippi, may bear interest payable at such time or times and at such place or places and evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the State Bond Commission under which the bonds are authorized to be issued. Such bonds shall not bear a greater overall maximum interest rate to maturity than that authorized by law for general obligation bonds. If deemed advisable by the State Bond Commission, there may be retained in the proceedings under which any such bonds are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and briefly recited or referred to on the face of the bonds, but nothing herein contained shall be construed to confer on the state any right or option to redeem any bonds, except as may be provided in the proceedings under which they shall be issued. Any such bonds shall be sold on sealed bids at public sale, and for such price as the State Bond Commission determines to be in the best interest of the State of Mississippi, but no such sale shall be made at a price less than par value plus accrued interest to date of delivery of the bonds to the purchaser. The state may pay all expenses, premiums and commissions which the State Bond Commission may deem necessary or advantageous in connection with the issuance thereof, but solely from the proceeds of the bonds. The issuance by the state of one or more series of bonds shall not preclude it from issuing other series of bonds, but the proceedings under which any subsequent bonds may be issued shall recognize and protect any prior pledge made for any prior issuance of bonds.

SOURCES: Laws, 1987, ch. 482, § 12; Laws, 2009, ch. 557, § 33; Laws, 2011, ch. 431, § 7, eff from and after passage (approved Mar. 16, 2011.)

Amendment Notes — The 2011 amendment substituted “Until June 30, 2014, this section shall read as follows:” for “Until June 30, 2011, this section shall read as follows:” in the bracketed language of the first version; and substituted “From and after July 1, 2014, this section shall read as follows:” for “From and after July 1, 2011, this section shall read as follows:” in the bracketed language of the second version.

Cross References — State Bond Commission, see §§ 31-17-1, 31-17-3.

Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 38 et seq.

CJS. 81A C.J.S., States §§ 434 et seq.

§ 69-2-25. Interest and interest rates on bonds.

[Until June 30, 2014, this section shall read as follows:]

No bond issued under Sections 69-2-19 through 69-2-39 of this chapter shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified on the bonds; and all bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on bonds shall be payable semiannually or annually. If bonds are issued in coupon form, no interest payment shall be evidenced by more than one (1) coupon, and neither cancelled nor supplemental coupons shall be permitted. If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds.

[From and after July 1, 2014, this section shall read as follows:]

No bond issued under Sections 69-2-19 through 69-2-39 of this chapter shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified on the bonds; and all bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on bonds shall be payable semiannually or annually, except the first interest coupon attached to any bond may be for any period not exceeding one (1) year. If bonds are issued in coupon form, no interest payment shall be evidenced by more than one (1) coupon, and neither cancelled nor supplemental coupons shall be permitted. If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds.

SOURCES: Laws, 1987, ch. 482, § 13; Laws, 1993, ch. 472, § 3; Laws, 2009, ch. 557, § 34; Laws, 2011, ch. 431, § 8, eff from and after passage (approved Mar. 16, 2011.)

Amendment Notes — The 2011 amendment substituted "Until June 30, 2014, this section shall read as follows:" for "Until June 30, 2011, this section shall read as follows:" in the bracketed language of the first version; and substituted "From and after July 1, 2014, this section shall read as follows:" for "From and after July 1, 2011, this section shall read as follows:" in the bracketed language of the second version.

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 384, 395, 396.

CJS. 81A C.J.S., States § 438.

§ 69-2-27. Notice of bond sales.

[Until June 30, 2014, this section shall read as follows:]

If the bonds are to be sold by sealed bid at public sale, notice of the sale of any such bonds shall be published at least one time which shall be made not less than ten (10) days prior to the date of sale, and shall be so published in one or more newspapers having a general circulation in the City of Jackson selected by the State Bond Commission.

[From and after July 1, 2014, this section shall read as follows:]

Notice of the sale of any such bonds shall be published at least one time which shall be made not less than ten (10) days prior to the date of sale, and shall be so published in one or more newspapers having a general circulation in the City of Jackson selected by the State Bond Commission.

SOURCES: Laws, 1987, ch. 482, § 14; Laws, 1997, ch. 394, § 3; Laws, 2009, ch. 557, § 35; Laws, 2011, ch. 431, § 9, eff from and after passage (approved Mar. 16, 2011.)

Amendment Notes — The 2011 amendment substituted “Until June 30, 2014, this section shall read as follows:” for “Until June 30, 2011, this section shall read as follows:” in the bracketed language of the first version; and substituted “From and after July 1, 2014, this section shall read as follows:” for “From and after July 1, 2011, this section shall read as follows:” in the bracketed language of the second version.

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 201.

CJS. 81A C.J.S., States § 256.

§ 69-2-29. Execution procedures for bonds and coupons.

All bonds shall be executed on behalf of the state by the manual or facsimile signature of the chairman of the State Bond Commission and shall be countersigned by the manual or facsimile signature of the secretary of the State Bond Commission. All coupons shall be executed on behalf of the state by the facsimile signatures of the chairman and secretary of the State Bond Commission. If the officers whose signatures or countersignatures appear on the bonds or interest coupons shall cease to be such officers before delivery of the bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery, or had been in office on the date such bonds may bear.

SOURCES: Laws, 1987, ch. 482, § 15, eff from and after passage (approved April 15, 1987).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 185.

CJS. 81A C.J.S., States § 255.

§ 69-2-30. Borrowing funds for Emerging Crops Fund in lieu of issuing bonds.

(1) In lieu of the issuance of bonds pursuant to the authority granted in Section 69-2-19, Mississippi Code of 1972, the State Bond Commission is authorized and empowered, if more economically feasible, to borrow funds in an aggregate principal amount not to exceed the amount specified in Section 69-2-19, Mississippi Code of 1972. The Bond Commission, to evidence such loan, may issue and sell the negotiable coupon notes of the State of Mississippi, which notes may be issued in series, from time to time, as the proceeds thereof are needed. The notes shall be in such form and shall have such details as may be provided by the commission, except that the notes of each series shall be issued with final maturity not more than five (5) years from the date of such series. For the prompt payment of such notes at maturity, both principal and interest, the same pledges may be made as are authorized for the repayment of bonds in Section 69-2-21, Mississippi Code of 1972.

(2) The notes herein authorized shall be sold from time to time by the Bond Commission as the need for the proceeds thereof may arise, and the Bond Commission shall advertise and accept bids therefor and issue and sell such notes at a price which will result in the lowest interest rate on the best terms obtainable for the state.

(3) The Bond Commission in providing for the issuance of the notes herein authorized shall have discretion in fixing the terms and details thereof and may provide for the issuance of such notes in such form, executed in such manner, and payable at such place or places, and containing such terms, covenants and provisions as the Bond Commission may provide.

SOURCES: Laws, 1988, ch. 580, § 20, eff from and after passage (approved May 21, 1988).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

§ 69-2-31. Transfer and disbursement of proceeds of sale of bonds and notes.

Upon the issuance and sale of bonds or notes, the State Bond Commission shall transfer the proceeds of any such sale or sales to the Emerging Crops Fund. The proceeds of such bonds or notes shall be disbursed solely upon the order of the department under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds or notes.

SOURCES: Laws, 1987, ch. 482, § 16; Laws, 1988, ch. 580, § 21, eff from and after passage (approved May 21, 1988).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

§ 69-2-33. Duties of Attorney General with respect to bonds and notes; costs of issuing bonds and notes.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the department in issuing, selling and validating bonds or notes authorized under Sections 69-2-19 through 69-2-39 of this chapter, and the department is authorized to pay from the proceeds derived from the sale of such bonds or notes, or from other funds available to the department, the reasonable cost of approving attorney's fees, validating, printing and cost of delivery of such bonds or notes.

SOURCES: Laws, 1987, ch. 482, § 17; Laws, 1988, ch. 580, § 22; Laws, 2012, ch. 546, § 30, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added the exception at the beginning.

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

§ 69-2-35. Bonds and notes as legal investments for banks and other entities.

Bonds or notes issued under Sections 69-2-19 through 69-2-39 of this chapter shall be legal investments for commercial banks, trust companies, savings and loan associations, and insurance companies organized under the laws of this state.

SOURCES: Laws, 1987, ch. 482, § 18; Laws, 1988, ch. 580, § 23, eff from and after passage (approved May 21, 1988).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. 2d, Banks §§ 515-518, 613-617.

CJS. 9 C.J.S., Banks and Banking § 164.

§ 69-2-37. Tax treatment of bonds and notes, and income therefrom.

All bonds or notes issued under Sections 69-2-19 through 69-2-39 of this chapter and the income therefrom shall be exempt from all taxation in the State of Mississippi except gift, transfer and inheritance taxes.

SOURCES: Laws, 1987, ch. 482, § 19; Laws, 1988, ch. 580, § 24, eff from and after passage (approved May 21, 1988).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Federal Aspects — Federal tax treatment of interest on state bonds, see 26 USCS § 103.

§ 69-2-39. Empowering clause; exemption from limitations generally imposed on state obligations.

Sections 69-2-19 through 69-2-39 of this chapter, without reference to any statute not referred to herein, shall be deemed to be full and complete authority for the issuance of such bonds or notes, and shall be construed as an additional and alternative method therefor, and none of the present restrictions, requirements, conditions or limitations of law applicable to the issuance or sale of bonds, notes or other obligations by the state shall apply to the issuance and sale of bonds or notes under Sections 69-2-19 through 69-2-39 of this chapter, and no proceedings shall be required for the issuance of such bonds or notes other than those provided for and required herein, and all powers necessary to be exercised in order to carry out the provisions of Sections 69-2-13 through 69-2-37 of this chapter are hereby conferred.

SOURCES: Laws, 1987, ch. 482, § 20; Laws, 1988, ch. 580, § 25, eff from and after passage (approved May 21, 1988).

Cross References — Limits on attorney fees paid as the result of issuance of bonds under §§ 69-2-19 through 69-2-39, see § 69-2-40.

Government officials or their associates, not to derive income from issuance of bonds or disposition of property under §§ 69-2-19 through 69-2-39, see § 69-2-40.

§ 69-2-40. Limits on attorney fees; government officials and associates not to derive income from issuance of bonds or disposition of property.

(1) Any attorney's fees paid as the result of the issuance of bonds under Sections 69-2-19 through 69-2-39 of this chapter shall be in compliance with the limits on attorney's fees for bond issues as adopted by the State Bond Commission. Attorney's fees paid as the result of the issuance of such bonds are subject to negotiation but in no event may they exceed the limits established by the State Bond Commission. A detailed accounting of all expenses incurred by all persons, firms, corporations, associations or other organizations involved in such bond issues shall be submitted to the State Bond Commission within ninety (90) days after the issuance of such bonds and shall be a matter of public record.

(2) No member of the Legislature, elected official or appointed official, or any partner or associate of any member of the Legislature, elected official or appointed official, shall derive any income from the issuance of any bonds or the disposition of any property under Sections 69-2-19 through 69-2-39 of this chapter contrary to the provisions of Section 109, Mississippi Constitution of 1890, or Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

SOURCES: Laws, 1993 Ex Sess, ch. 1, § 2, eff from and after passage (approved August 9, 1993).

§ 69-2-41. Savings clause.

If for any reason any section, paragraph, provision, clause or part of Sections 69-2-13 through 69-2-39 of this chapter shall be held unconstitutional or invalid, that section shall not affect or invalidate any other section, paragraph, provision, clause or part of this chapter not in and of itself invalid, but the remaining portions thereof shall be in force without regard to that so invalidated.

SOURCES: Laws, 1987, ch. 482, § 21, eff from and after passage (approved April 15, 1987).

VOLUNTARY FARM DEBT MEDIATION PROGRAM

SEC.
69-2-43 through 69-2-49. Repealed.
69-2-51. Prospective repeal of voluntary mediation provisions.

§§ 69-2-43 through 69-2-49. Repealed.

Repealed by Laws of 1990, ch. 496, § 5, eff from and after July 1, 1992.

§ 69-2-43 through § 69-2-49. [Laws, 1987, ch. 482, §§ 22-25; reenacted, Laws, 1988, ch. 425, §§ 1-4; reenacted, Laws, 1990, ch. 496, §§ 1-4, eff from and after July 1, 1990]

Editor's Note — Former §§ 69-2-43 to 69-2-49 related to the creation and operation of the Voluntary Farm Debt Mediation Program.

§ 69-2-51. Prospective repeal of voluntary mediation provisions.

Sections 69-2-43 through 69-2-49 of this chapter, which create a Farm Mediation Office in the Department of Agriculture and Commerce and which provide for the mediation of certain agricultural debts, shall stand repealed from and after July 1, 1992.

SOURCES: Laws, 1987, ch. 482, § 26; reenacted and amended, Laws, 1988, ch. 425, § 5; amended, Laws, 1990, ch. 496, § 5, eff from and after July 1, 1990.

CHAPTER 3

Agricultural Seeds

Article 1. Sales 69-3-1
Article 3. Seed Certification 69-3-101

ARTICLE 1.

SALES.

SEC.
69-3-1. Definitions.
69-3-3. Seedsman permits.
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§ 69-3-1. Definitions.

Wherever the following terms or similar terms are used in this article, they shall have the following meanings, unless the context clearly indicates otherwise:

(a) "Advertisement" means all representations made by the labeler, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this article.

(b) "Agricultural seeds" means the seed of grass, forage, cereal and fiber crops, lawn seed, and any other kinds of seed, including transgenic seeds, recognized within this state as agricultural or field seeds, and mixtures of such seeds.

(c) "Bulk" or "in bulk" means seed when loose either in vehicles of transportation, bins, cribs or tanks, and not seed in bags, boxes, cartons, bulk/super bags or other containers.

(d) "Certified seed," "registered seed" and "foundation seed" mean seed that has been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of an official certifying agency authorized by the laws of this state or the laws of another state or country.

(e) "Commercial grower" means a person, firm or corporation engaged primarily in the production of seed for planting purposes for sale or trade.

(f) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi.

(g) "Commission merchant" or "agent" means a person, firm or corporation engaged in the selling of packet seed of less than four (4) ounces to consumers.

(h) "Consumer" means any person who purchases or otherwise obtains seed for sowing but not for resale.

(i) "Council" means the seed arbitration council created under Section 63-3-20.

(j) "Date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(k) "Department" means the Mississippi Department of Agriculture and Commerce.

(*l*) "Federal Seed Act" means the laws codified at 7 USCS 1551 et seq., and all regulations promulgated thereunder.

(m) "Firm ungerminated seed" means live seed, other than hard seed, which neither germinate nor decay during the period and under the conditions prescribed for germination of such seed by the rules and regulations promulgated pursuant to provisions of this article.

(n) "Flower seed" means the seeds of herbaceous plants grown for their blooms, ornamental foliage or other ornamental parts, including transgenic seeds, and commonly known and sold under the name of flower seeds in this state.

(o) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and combining: (i) two (2) or more inbred lines; or (ii) one (1) inbred line or a single cross with an open-pollinated variety; or (iii) two (2) varieties or species, except open-pollinated varieties of corn. The second generation and subsequent generations of such crosses shall not be regarded as hybrids.

(p) "Kind" means one or more related species or subspecies which singly or collectively is known by one (1) common name; for example: soybeans, crimson clover, striate lespedeza, tall fescue.

(q) "Label" means the display or displays of written, printed or graphic matter upon or attached to the container of seed pertaining to the contents of the container.

(r) "Labeler" means the person, firm, corporation or the registered code number whose name appears on the label or container of seed.

(s) "Labeling" includes all labels and other written, printed or graphic representations made by the labeler accompanying and pertaining to the seed product whether in bulk or in containers, and any product use guides for the technology of the seed, that may be distributed in any manner including representations on invoices except for current official publications of the United States Department of Agriculture, state extension services, state experiment stations, state agricultural colleges and other similar federal or state institutions or agencies authorized by law to conduct research.

(t) "Lot of seed" means a definite quantity of seed identified by a lot number or other identification mark, every portion or bag of which is uniform for the factors which appear on the label, within permitted tolerances.

(u) "Mixed" or "mixture" means seeds consisting of more than one (1) kind, or kind and variety, or strain, each present in excess of five percent (5%) of the whole.

(v) "Official certifying agency" means an agency authorized or recognized and designated as a certifying agency by the laws of a state, the United States, a province of Canada, or the government of a foreign country.

(w) "Origin" means the state, District of Columbia, Puerto Rico, or possessions of the United States, or the foreign country where the seeds were grown.

(x) "Processing" means cleaning, scarifying, blending or treating to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed.

(y) "Product use guide" means any written information prepared by the labeler and distributed to the consumer, containing specific information concerning a seed product or a technology.

(z) "Prohibited noxious weed seed" means the seeds of weeds that reproduce by seed, and/or spread by underground roots or stems, and which, when established, are highly destructive and difficult to control in this state by ordinary good cultural practice, or constitute a peculiar hazard to the agriculture of this state.

(aa) "Pure seed," "germination," "other crop seed," "inert matter" and other seed labeling and testing terms in common usage not defined herein are defined as in the Federal Seed Act and the rules and regulations promulgated under that act.

(bb) "Recognized professional" means a person who is a licensed consultant, a certified crop advisor or any other person recognized by the arbitration council to be qualified to provide expert advise and opinion on seed performances.

(cc) "Restricted noxious weed seed" means the seeds of weeds that are particularly objectionable in fields, lawns or gardens of this state, but which can ordinarily be controlled by good cultural practice.

(dd) "Seed record" means information which relates to the origin, treatment, germination and purity of each lot of agricultural seed sold, offered or exposed for sale in this state, or which relates to the treatment, germination and variety of each lot of vegetable, flower, or tree and shrub seed sold, offered or exposed for sale in this state. Such information includes seed samples and records of declarations, labels, purchases, sales, cleaning, bulking, handling, storage, analyses, tests and examinations.

(ee) "Seedsman" means a person, firm or corporation engaged in the buying, selling or exchanging, offering or exposing for sale agricultural seeds or mixtures thereof, vegetable, flower, tree and shrub seeds as defined in this article.

(ff) "Stop sale order" means any written or printed notice or order given or issued by the commissioner or his authorized agents to the owner or custodian of any lot of agricultural, vegetable, flower, or tree and shrub seeds in this state, directing such owner or custodian not to sell, offer or expose such seeds for sale for planting purposes within this state until requirements of this article shall have been complied with and a written release has been issued.

(gg) "Strain" means the subdivision of a variety; for example: Clemson nonshattering soybeans, Strain 4.

(hh) "Treated" means that the seed has been given an application of a substance or subjected to a process designed to control or repel certain disease organisms, insects or other pests attacking such seeds or seedlings grown therefrom to improve its planting value or to serve any other purpose.

(ii) "Tree and shrub seeds" means the seeds of woody plants, including transgenic seeds, commonly known and sold as tree and shrub seeds in this state.

(jj) "Tolerance" means the allowance for sampling variation specified under rules and regulations promulgated pursuant to the provisions of this article.

(kk) "Transgenic seed" means seed from a plant whose genetic composition has been altered by methods other than those used in conventional plant breeding to produce seed that contains selected genes from other plants or species that will produce results such as herbicide tolerance, or resistance, insect tolerance, or resistance, or other traits derived from biotechnology.

(*ll*) "Variety" means a subdivision of a kind which is characterized by growth, plant, fruit, seed or other characteristics by which it can be differentiated in successive generations from other sorts of the same kind; for example: Lee soybeans, Frontier crimson clover, Kobe striate lespedeza, Kentucky 31 tall fescue.

(mm) "Vegetable seeds" means the seeds of those crops which are grown in gardens or on truck farms, including transgenic seeds, and are generally known and sold under the name of vegetable seeds in this state.

(nn) "Weed seed" means the seeds, bulblets or tubers of all plants generally recognized as weeds within the state and includes noxious weed seeds.

(oo) "Wholesale distributor" means a person, firm or corporation engaged in the selling of seed to a seedsman holding a permit as required by subsection (1)(c) of Section 69-3-3.

SOURCES: Codes, 1942, § 4397-01; Laws, 1964, ch. 204, § 1; Laws, 1968, ch. 249, § 1; Laws, 1989, ch. 489, § 1; reenacted and amended, Laws, 1991, ch. 541,

§ 1; reenacted without change, Laws, 1996, ch. 314, § 1; Laws, 1998, ch. 473, § 1; Laws, 2000, ch. 623, § 1, eff from and after July 1, 2000.

Editor's Note — Laws, 1991, ch. 541, § 3, amended Laws, 1989, ch. 489, § 3, so as to extend the repeal date of this section to July 1, 1996.

Laws, 1996, ch. 314, § 3, amended Laws, 1989, ch. 489, § 3, to remove the language providing for the repeal of the amendment by that act effective July 1, 1996.

Cross References — Terms defined for State Plant Board, see § 69-25-1.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 34 et seq.

CJS. 3 C.J.S., Agriculture §§ 1 et seq.

§ 69-3-3. Seedsman permits.

(1) Every seedsman who sells, offers for sale, exposes for sale, distributes or solicits orders for the sale of any agricultural seed or mixtures thereof, vegetable seed, flower seed, or tree and shrub seed as defined in Section 69-3-1 to farmers, retail seed dealers, wholesale distributors, or to others who use or plant such seed in the State of Mississippi, shall, before selling or offering such seed for sale or distributing or soliciting orders for the sale of such seed and on or before the first day of July of each year, secure an annual permit from the commissioner to engage in such business. Seed dealers and other sellers of seed shall apply for an annual permit upon forms prescribed by the commissioner and such a permit shall be issued upon the payment of the following permit fees when the application is in proper form:

(a) Each seedsman selling packet seed, in closed containers of less than four (4) ounces, through commission merchants or agents, shall furnish each agent with permit at fee of Two Dollars and Fifty Cents ($2.50) per agent. A separate permit shall be required for each location or place of business with rack display.

(b) For each seedsman engaged in selling vegetable seed at retail from containers of four (4) ounces or more, not displayed on a rack, a permit fee of Five Dollars ($5.00) for each such place of business. This permit will qualify the seedsman to only sell vegetable seeds, as identified by the Federal Seed Act, directly to the consumer.

(c) For each seedsman engaged in selling seed at retail to the consumer, except vegetable seed dealers as defined above and packet seed agents, a permit fee of Twenty-five Dollars ($25.00) for each such place of business. This permit will qualify the seedsman to only sell seed to the consumer for sowing but not for resale.

(d) For each seedsman engaged in selling seed to wholesale distributors only, a permit fee of Five Dollars ($5.00) for each such place of business of the seller. This permit will qualify the seedsman to sell only to "wholesale distributors."

(e) For each seedsman engaged in selling seed as a wholesale distributor, a permit fee of One Hundred Dollars ($100.00) for each such place of business. This permit qualifies a seedsman to sell at levels for permits required by paragraphs (a), (b), (c), (d) and (e) of this section.

(2) Out-of-state seedsmen who sell or ship seed into this state shall obtain a permit in the same manner as described in paragraphs (a), (b), (c), (d) and (e) of this section.

(3) For the purpose of enforcement of the permit provisions of this section, the type of permit held by the buyer shall determine the type of permit required of the seller.

(4) Permits shall be renewed annually, beginning July 1, and may be revoked for cause by the commissioner. Failure to renew such permit by September 1 of each year will incur a penalty of twenty-five percent (25%) to the cost of the permit. The initial registration will be at the prescribed fee. However, the fee for first time permit applicants received on or after April 1 will be prorated by the commissioner for all classifications except packet agent permits.

(5) The Mississippi Agricultural and Forestry Experiment Station shall be exempt from permit requirements for seed distributed for increase.

SOURCES: Codes, 1942, § 4397-02; Laws, 1964, ch. 204, § 2; Laws, 1968, ch 249, § 2; Laws, 1997, ch. 611, § 1, eff from and after July 1, 1997.

Editor's Note — Laws, 1997, ch. 611, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st 1997 Extraordinary Session of the Legislature on April 23, 1997.

Cross References — Duty of commissioner to establish grades and standards of farm products, see § 69-1-19.

Advertising of seeds or plants as state certified, see § 69-3-109.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 50 et seq.

CJS. 3 C.J.S., Agriculture § 2.

§ 69-3-4. Transfers of Bermuda grass; permit required; fee; misrepresentation and infringement of brand prohibited; penalties; rules and regulations.

(1) Every person, firm, association or corporation that shall transfer ownership of Bermuda grass for commercial sprigging, or that shall issue, use or circulate any certificate, advertisement, tag, seal, poster, letterhead, marking circular, written or printed representation or description of or pertaining to Bermuda grass intended for commercial sprigging or sale shall conform to the standards or requirements as made by the Commissioner of Agriculture and Commerce. Such persons, firms, associations and corporations, before transferring ownership of Bermuda grass, on or before the first day of July of each year, shall secure an annual permit from the Commissioner of Agriculture to engage in such business or practice. The annual permit fee shall not exceed Twenty-five Dollars ($25.00) for each person or place of business.

(2) If a person, firm, association or corporation discovers a new selection of Bermuda grass, such entity shall not name the grass in such a manner as to misrepresent, infringe or mimic a name already on the market. The commissioner may revoke the permit of any person who misrepresents, infringes or mimics a name in violation of this section.

(3) Any person who transfers ownership of Bermuda grass for commercial sprigging without a permit as required under this section shall be subject to a civil penalty, not to exceed Two Hundred Fifty Dollars ($250.00). All penalties levied by the commissioner shall be paid into the General Fund in the State Treasury.

(4) The Commissioner of Agriculture and Commerce shall promulgate rules and regulations to implement the provisions of this act.

SOURCES: Laws, 2002, ch. 596, § 2, eff from and after passage (approved Apr. 11, 2002.)

§ 69-3-5. Labeling requirements.

(1) Each container of agricultural, vegetable, flower, or tree and shrub seeds sold, offered for sale, or exposed for sale, or transported within this state for seeding purposes shall bear thereon or have attached in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

(a) For agricultural seed:

(i) The commonly accepted name of kind and variety of each agricultural seed present in excess of five percent (5%) of the whole and the percentage by weight of each in the order of its predominance. When more than one (1) kind and variety is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label, but the commissioner may by regulation permit certain kinds of seed to be labeled "mixed" without showing the percentage of each variety present. Hybrids shall be labeled with the name and/or number by which the hybrid is commonly designated.

(ii) Lot number or other designation.

(iii) Net weight.

(iv) Origin.

(v) Percentage by weight of all weed seed, including noxious weed seed.

(vi) Percentage by weight of inert matter.

(vii) Percentage by weight of other crop seed.

(viii) For each named agricultural seed:

1. Percentage of germination, exclusive of hard seed or firm seed.
2. Percentage of hard seed, if present.
3. Percentage of firm ungerminated seed, if present.
4. The calendar month and year the test was completed to determine such percentages.

(ix) The name and number per pound of each kind of restricted noxious weed seed.

(x) The name and address, or the registered code number, of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this state.

(xi) In addition to the above label requirements, the commissioner may, by regulation, require certain additional information for the label.

(b) For vegetable seed in containers of more than one (1) pound:

(i) Name of kind and variety of seed.

(ii) Net weight.

(iii) Lot number or other identification.

(iv) Percentage of germination, exclusive of hard seed.

(v) Percentage of hard seed, if present.

(vi) Calendar month and year the test was completed to determine such percentages.

(vii) The name and address, or the registered code number, of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this state.

(viii) For seeds which germinate less than standards prescribed under rules and regulations, the words "below standard" in not less than 8-point type must be written or printed on face of tag in addition to other information required.

(c) For vegetable seed in containers of one (1) pound or less:

(i) Name of kind and variety.

(ii) The name and address, or the registered code number, of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this state.

(iii) For seed which germinate less than the standards prescribed for such seed under rules and regulations, the following additional information must be shown:

1. Percentage of germination, exclusive of hard seed.
2. Percentage of hard seed, if present.
3. Calendar month and year the test was completed to determine such percentage.
4. The words "below standard" in not less than 8-point type.

(d) For flower seed:

Flower seed shall be labeled to comply with rules and regulations promulgated under this article.

(e) For tree and shrub seed:

Tree and shrub seed shall be labeled to comply with the rules and regulations promulgated under this article.

(f) For treated seed:

All seed treated shall be labeled to comply with the rules and regulations promulgated under this article.

(2) The labeler shall keep records of the year of production and blending components of all agricultural or vegetable seed in each lot labeled, distributed or offered for sale within the state. Upon request the records of each lot of seed shall be made available to the purchaser of seed from such lots either through

information on the label, the container or other means that may be required by regulation to provide the information requested in a timely manner.

SOURCES: Codes, 1942, § 4397-03; Laws, 1964, ch. 204, § 3; Laws, 2000, ch. 623, § 2, eff from and after July 1, 2000.

Cross References — Prerequisites to filing cause of action against seedsman for failure of seeds to perform as represented by seed label, see § 69-3-19.

Advertising of seeds or plants as state certified, see § 69-3-109.

JUDICIAL DECISIONS

1. In general.

Even if cotton seed sales arranged by a Mississippi agricultural cooperative were regarded as direct farmer-to-farmer transactions they nevertheless violated Plant Variety Protection Act § 111, 7 USCS § 2541, since the sales were not made in compliance with district labeling requirements of Mississippi laws governing the sale of seed (Code §§ 69-3-5, 69-3-9, 69-3-11). Delta & Pine Land Co. v. Peoples Gin Co., 546 F. Supp. 939 (N.D. Miss. 1982), aff'd, remanded, 694 F.2d 1012 (5th Cir. 1983).

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 48 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Fraud and Deceit, Form 37.1 (complaint, petition, or declaration — misrepresentation as to germination of seed).

CJS. 3 C.J.S., Agriculture §§ 1 et seq.

§ 69-3-6. Seed inspection fees.

(1) The department may establish seed inspection fees, prescribe and furnish forms, and require the filing of reports necessary for the payment of the inspection fees. The department may inspect the record of any seedsman during the normal hours of business operation as it deems necessary.

(2) All fees collected under this section shall be deposited into a special fund in the State Treasury. The department may expend the monies in the fund by an annual appropriation approved by the Legislature for the support of the Seed Division of the Bureau of Plant Industry.

(3) Every seedsman who sells or distributes seed for sale, whether in bulk or in containers, within or into Mississippi for planting purposes, shall be assessed a seed inspection fee as required by the department.

(4) Every seedsman must:

(a) Pay an inspection fee on the total number of pounds of seed sold or otherwise distributed for sale within or into the state. Payment of the seed inspection fees shall be the responsibility of the seedsman initiating the first sale of seed within or into the state;

(b) Maintain records, as required by the department, that accurately reflect the total pounds of seed subject to the fees that are handled, sold or offered, or distributed for sale;

(c) File quarterly notarized reports on forms provided or approved by the department, covering the total pounds of all sales of seed subject to the fee and sold during the preceding quarter. The reports and fees due shall be filed with the department no later than thirty (30) days following the end of each calendar quarter.

(5) A seedsman who does not file the quarterly report by the due date shall pay a penalty fee as provided by the regulations of the department. The penalty fee shall be waived if the seedsman obtains prior written approval from the department for a late filing and complies with the late filing requirements.

(6) If a seedsman does not comply with all the requirements of this section, the Commissioner may suspend the seedsman's permit until the seedsman is in compliance.

SOURCES: Laws, 2005, ch. 453, § 1; Laws, 2009, ch. 319, § 1, eff from and after passage (approved Mar. 9, 2009.)

§ 69-3-7. Records.

(1) Each person handling seed shall keep for a period of two (2) years a complete seed record of agricultural, vegetable, flower, or tree and shrub seeds handled.

(2) The records shall include the information for seed records as defined in Section 69-3-1.

(3) The commissioner or his duly authorized agents shall have the right to inspect such records for the purpose of the effective administration of this article.

SOURCES: Codes, 1942, § 4397-04; Laws, 1964, ch. 204, § 4; Laws, 2000, ch. 623, § 3, eff from and after July 1, 2000.

§ 69-3-9. Prohibitions.

(1) It shall be unlawful for any person to sell, offer for sale or expose for sale any agricultural seed, mixtures of agricultural seed, vegetable seed, flower seed, or tree and shrub seed, as defined in this article, for seeding purposes within this state:

(a) Unless a permit has been obtained in accordance with provisions of this article.

(b) Unless the test to determine the percentage of germination required by Section 69-3-5 shall have been completed within the period specified in the rules and regulations promulgated pursuant to the provisions of this article.

(c) Not labeled in accordance with the provisions of this article, or having a false or misleading labeling or claim.

(d) Pertaining to which there has been a false or misleading advertisement.

(e) Consisting of, or containing, prohibited noxious weed seeds.

(f) Containing restricted noxious weed seeds, except as prescribed by regulations promulgated under this article.

(g) Containing weed seeds, including those of noxious weeds, in excess of limits set forth in the rules and regulations promulgated pursuant to the provisions of this article.

(h) That have been treated with a poisonous material and not labeled in accordance with provisions of this article and regulations promulgated thereunder.

(i) To which there are affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality or origin of the seeds.

(j) Having tags or labels attached to the containers of seed bearing thereon a liability or nonwarranty clause disclaiming responsibility for the information on the label required by Section 69-3-5.

(k) Unless it conforms to the definition of a "seed lot" or "lot of seed" as defined in this article.

(2) It shall be unlawful for any person within this state:

(a) To detach, alter, deface or destroy any label provided for in this article or the regulations promulgated thereunder, or to alter or substitute seed in any manner that may defeat the purpose or provisions of this article.

(b) To disseminate false or misleading advertisements in any manner concerning agricultural, vegetable, flower, or tree and shrub seeds.

(c) To sell, distribute, offer for sale or expose for sale any agricultural, vegetable, flower, or tree and shrub seeds labeled "certified seed," "registered seed" or "foundation seed" unless it has been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of an official certifying agency as defined in this article.

(d) To sell seed represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this article.

(e) To hinder or obstruct in any manner the commissioner or an authorized agent of the commissioner in the performance of his duties.

(f) To fail to comply with a stop sale order or seizure order, or to dispose of any seed suspended from sale or use without proper release.

(g) To use the name of the department of agriculture, or the results of tests and inspections made by the department, for advertising purposes.

(h) To label and offer for sale seed under the scope of this article without keeping complete records as specified in Section 69-3-7.

(i) To use the words "type" or "trace" in lieu of information required by Section 69-3-5.

SOURCES: Codes, 1942, § 4397-05; Laws, 1964, ch. 204, § 5; Laws, 1968, ch. 249, § 3, eff from and after January 1, 1969.

JUDICIAL DECISIONS

1. In general.

Even if cotton seed sales arranged by a Mississippi agricultural cooperative were regarded as direct farmer-to-farmer transactions they nevertheless violated Plant Variety Protection Act § 111, 7 USCS § 2541, since the sales were not made in compliance with district labeling requirements of Mississippi laws governing the sale of seed (Code §§ 69-3-5, 69-3-9, 69-3-11). Delta & Pine Land Co. v. Peoples Gin Co., 546 F. Supp. 939 (N.D. Miss. 1982), aff'd, remanded, 694 F.2d 1012 (5th Cir. 1983).

§ 69-3-11. Exemptions.

Agricultural seed or mixtures of same, vegetable seed, flower seed, and tree and shrub seed shall be exempt from provisions of this article:

(1) When sold and delivered by a farmer-grower of this state on his own premises, but a farmer-grower is required to label seed when sold and shipped away from his premises, but is not required to hold the seedsman's permit. These provisions do not apply to commercial growers of seed.

(2) When sold or represented to be sold for purposes other than seeding, providing that the vendor shall make it unmistakably clear to the purchaser of such seed that it is not for seeding purposes.

(3) When seed for processing is being transported to, or consigned to, or stored in a processing or cleaning establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for processing." Other labeling or representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this article.

(4) No label shall be required, unless requested by the purchaser, on agricultural seed, mixtures of same, vegetable seed, flower, and tree and shrub seed when such seeds are sold directly to and in the presence of the purchaser and taken from a container labeled in accordance with this article.

(5) No person shall be subjected to the penalties of this article for having sold, offered or exposed for sale in this state agricultural seed, mixtures of same, vegetable seed, flower seed, or tree and shrub seed which were incorrectly labeled or represented as to kind, variety or origin, which seed cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration or other labeling information and to take such other precautions as may be reasonable to insure the identity to be that stated.

SOURCES: Codes, 1942, § 4397-06; Laws, 1964, ch. 204, § 6; Laws, 1968, ch. 249, § 4, eff from and after January 1, 1969.

JUDICIAL DECISIONS

1. In general.

Even if cotton seed sales arranged by a Mississippi agricultural cooperative were regarded as direct farmer-to-farmer transactions they nevertheless violated Plant Variety Protection Act § 111, 7 USCS § 2541, since the sales were not made in compliance with district labeling requirements of Mississippi laws governing the sale of seed (Code §§ 69-3-5, 69-3-9, 69-3-11). Delta & Pine Land Co. v. Peoples Gin Co., 546 F. Supp. 939 (N.D. Miss. 1982), aff'd, remanded, 694 F.2d 1012 (5th Cir. 1983).

§ 69-3-13. Disclaimers, nonwarranties and limited warranties.

A disclaimer, nonwarranty or limited warranty used on labels or in advertisement shall not directly or indirectly deny or modify any information required by this article or the regulations promulgated thereunder.

SOURCES: Codes, 1942, § 4397-07; Laws, 1964, ch. 204, § 7, eff from and after January 1, 1965.

Cross References — Regulation of sale of acids, alkalis, and poisons, generally, see §§ 41-29-1 et seq.

Regulation of sale of economic poisons, see §§ 69-23-1 et seq.

§ 69-3-15. Withdrawal of seed.

(1) Seed not having a reasonable germination or which are extremely impure, notwithstanding the fact that they may be properly labeled, shall be withdrawn from sale and declared worthless when, in the opinion of the commissioner, such withdrawal is in the interest of normal crop production in this state.

(2) Worthless seed in violation of this article shall not be sold or given away for planting purposes.

SOURCES: Codes, 1942, § 4397-08; Laws, 1964, ch. 204, § 8, eff from and after January 1, 1965.

Cross References — Duties of commissioner, generally, see § 69-1-13.

§ 69-3-17. Enforcing agency.

The duty of enforcing this article and its provisions and requirements shall be vested in the commissioner of agriculture and commerce, who shall have authority to establish rules and regulations not inconsistent with the provisions of this article, and who is hereby authorized to employ such agents and persons as in his judgment shall be necessary therefor. The commissioner may make use of other employees of the state department of agriculture and commerce.

SOURCES: Codes, 1942, § 4397-09; Laws, 1964, ch. 204, § 9, eff from and after January 1, 1965.

Cross References — Duties of commissioner, generally, see § 69-1-13.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS. 3 C.J.S., Agriculture §§ 2 et seq.

§ 69-3-19. Duties of enforcing agency.

(1) It shall be the duty of the Commissioner of Agriculture and Commerce, acting either directly or through his duly authorized agents:

(a) To sample, inspect, make analyses of and test agricultural, vegetable, flower, tree and shrub seeds, and transgenic seeds, transported, held in storage, sold, offered for sale or exposed for sale, or distributed within this state for seeding purposes, at such time and place, and to the extent as he may deem necessary to determine whether the seeds are in compliance with this article, and to notify promptly the person who transported, distributed, possessed, sold, offered or exposed the seed for sale, of any violation. Such test results shall be sufficient to be used by the Mississippi Department of Transportation to determine whether or not seed so tested meets the requirements of the Department of Transportation as set out in its contract specifications. No further testing shall be required unless the Department of Transportation determines that more than nine (9) months has elapsed, exclusive of the calendar month in which the test was completed, between the germination test data and the time of planting, or if by visual inspection the Department of Transportation determines that the seed was improperly stored or handled prior to planting.

(b) To prescribe and adopt reasonable rules and regulations governing the methods of sampling, inspecting, making analysis tests and examinations of agricultural, vegetable, flower and tree and shrub seeds, including standards, and the tolerances to be followed in the administration of this article, and any other reasonable rules and regulations as may be necessary to secure efficient enforcement of this article.

(c) To adopt and publish prohibited and restricted noxious weed seed lists.

(d) To publish list of kinds of seeds known and recognized to contain firm seeds.

(2) For the purpose of carrying out this article, the commissioner individually or through his designated agents is authorized:

(a) To enter upon any public or private premises where agricultural, vegetable, flower, or tree and shrub seeds are sold, offered or exposed for sale or distribution, during regular business hours in order to have access to seeds or records subject to this article and the rules and regulations, and to take samples of seed or copies of records in conformity therewith; and

(b) To establish, maintain and support a state seed testing laboratory with such facilities and personnel as may be deemed necessary. The laboratory shall be located at Mississippi State University of Agriculture and Applied Science. Such seed laboratory and equipment shall be in cooperation with Mississippi State University of Agriculture and Applied Science and under the supervision of the Director of the Bureau of Plant Industry, who shall be the state seed analyst; and

(c) To provide that any person, firm or corporation in this state shall have the privilege of submitting service seed samples for test to the state seed testing laboratory, subject to the charges as specified in the rules and regulations. Any person receiving a statement for seed analysis which is not paid in ninety (90) days will be in violation of this article. Any resident farmer may have one (1) sample of each kind tested free in any calendar year. A signed request by a farmer or individual must accompany the sample when it is sent in by a dealer; otherwise, the sample will be recorded and charges for analysis will be made to the dealer. Official seed samples drawn by inspectors in the enforcement of this article shall have first priority for testing in the state seed testing laboratory. The state seed analyst shall not be obligated to analyze uncleaned, unprocessed, and other time-consuming samples which obviously do not meet seed law requirements, except as time and facilities will permit; and

(d) To publish, in his discretion, the results of analyses, tests, examinations, field trials and investigations of any seed sampled under this article, together with any information he may deem advisable; and

(e) To issue and enforce a written or printed "stop sale" or "seizure" order to the owner or custodian of any lot of agricultural, vegetable, flower, or tree and shrub seeds which the commissioner or his authorized agent finds is in violation of this article or the rules and regulations, which shall prohibit further sale or movement of such seed until the officer has evidence that the law has been complied with and a written release has been issued to the owner or custodian of the seed; and

(f) To issue and enforce a "stop sale" or "seizure" order with respect to a particular variety of agricultural, vegetable, flower or tree and shrub seeds if the producer or distributor of such variety is found to have violated this article or the rules and regulations with respect to the particular variety, which shall remain in effect until the producer or distributor is in compliance with the law and has taken any action required by the commissioner to correct the effect of the violation in the marketplace; and

(g) To cooperate with the United States Department of Agriculture in seed law enforcement.

SOURCES: Codes, 1942, § 4397-10; Laws, 1964, ch. 204, § 10; Laws, 1968, ch. 249, § 5; Laws, 1981, ch. 413, § 1; Laws, 1989, ch. 489, § 2; reenacted and amended, Laws, 1991, ch. 541, § 2; reenacted and amended, Laws, 1996, ch. 314, § 2; reenacted and amended, Laws, 1997, ch. 611, § 2; Laws, 1998, ch. 473, § 2; Laws, 2000, ch. 623, § 4; reenacted and amended, Laws, 2002, ch. 596, § 1; Laws, 2005, ch. 449, § 1, eff from and after passage (approved Mar. 29, 2005.)

Editor's Note — Laws, 1991, ch. 541, § 3, amended Laws, 1989, ch. 489, § 3, so as to extend the repeal date of this section to July 1, 1996.

Laws, 1996, ch. 314, § 3, amended Laws, 1989, ch. 489, § 3, to remove the language providing for the repeal of the amendment by that act effective July 1, 1996.

Laws, 1997, ch. 611, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st 1997 Extraordinary Session of the Legislature on April 23, 1997.

Cross References — Duties of commissioner, generally, see § 69-1-13.

§ 69-3-20. Appointment of arbitration council.

(1) The commissioner shall appoint an arbitration council composed of six (6) members to hear and decide each complaint. The Director of the Mississippi Agricultural and Forestry Experiment Station, the Director of the Mississippi Cooperative Extension Service, the President of the Mississippi Seedsmen's Association, the President of the Mississippi Farm Bureau Federation, and the Alcorn State University Divisional Director of Agriculture and Applied Sciences shall supply to the commissioner a list of four (4) candidates from their respective organizations. The commissioner shall choose one (1) candidate from each organization's list in selecting a council to hear each complaint. On or before January 1 of each year the respective recommending organizations shall submit member recommendations if they want to make changes from their previous recommendations. The commissioner, or his designee, shall be a member of and serve as chairman of the council and he may appoint a secretary for the council. It shall be the duty of the chairman to call the council into session to conduct all meetings and deliberations and to direct all other activities of the council. It shall be the duty of the secretary to keep accurate and correct records of all meetings and deliberations and perform such other duties for the council as directed by the chairman. The commissioner shall prescribe and adopt reasonable rules and regulations governing the arbitration process to include conditions and circumstances associated with seed to which arbitration is applicable.

(2) The purpose of the arbitration council is to assist consumers and seedsmen in determining the validity of complaints made by consumers against seedsmen and recommend cost damages resulting from failure of the seed to properly perform or produce, whether related to specific representations on the label or the labeling, other information on the seed container or conditions attributed to the quality of the seed.

(3)(a) When the department refers a complaint made by a consumer against a seedsman to the arbitration council, the council shall make a full and complete investigation of the matters complained of, and at the conclusion of the investigation, report its findings and make its recommendations of cost damages and file them with the department. Council findings and recommendations may be admissible as evidence in a court of law. When a complaint involving transgenic seeds is filed for arbitration, the seedsman shall furnish the commissioner the technology and procedures necessary to conduct any test to determine whether the seeds will perform as represented by the seedsman. The commissioner shall ensure that all technology and procedural information submitted to the department by the seedsman shall be kept confidential to ensure the proprietary rights of the seedsman. After a final disposition of all judicial proceedings or expiration of any applicable statute of limitation, the commissioner shall return all technology, records, test data or procedural information to the seedsman. In addition, remedies for misappropriation of a trade secret shall be governed by the Mississippi Uniform Trade Secrets Act in Sections 75-26-1 through 75-26-19.

(b) In conducting its investigation the arbitration council or any member or members shall be authorized to examine the consumer on his farming operation of which he complains; to examine the seedsman on his packaging, labeling and selling operation of the seed alleged to be faulty; to conduct an appropriate test of a representative sample of the alleged faulty seed through the facilities of the state and under the supervision of the department when such action is deemed to be necessary; and to hold informal hearings at a time and place designated by the chairman upon reasonable notice to the consumer and the seedsman.

(c) Any investigation made by less than the entire membership of the council shall be made by authority of a written directive by the chairman and the investigation shall be summarized in writing and considered by the council in its findings and in making its recommendations.

(d) If the council holds an informal hearing to allow each party an opportunity to present their side of the dispute, attorneys may be present at the hearings to confer with their clients. However, no attorney may participate directly in the proceedings.

(4) A majority of the six-member council shall constitute a quorum and action by a majority of a quorum shall be the official act of the council.

(5) The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Any court of general jurisdiction in this state may enforce compliance with such subpoenas.

(6) The deliberations of the council at which the merits of a seed arbitration claim are under consideration shall not be subject to Section 25-41-1 et seq.

(7) The members of the council shall receive no compensation for the performance of their duties but shall be reimbursed for travel expenses in the manner and amount provided in Section 25-3-41, Mississippi Code of 1972.

(8) In lieu of a hearing by the council, informal hearings for arbitration may be conducted by an independent arbitrator appointed by the commissioner. The consumer filing a complaint or the seedsmen named in the complaint may request arbitration by an independent arbitrator. When a request is made, both parties shall be notified and consent to arbitration by an independent arbitrator. The commissioner shall appoint the arbitrator from a list of six (6) persons who shall be qualified to conduct arbitration proceedings. The commissioner shall publish the lists of qualified arbitrations every other year. The arbitrator appointed by the commissioner shall conduct all proceedings and hearings as provided in Section 69-3-20 and applicable rules and regulations and shall report the findings and recommendations to the commissioner.

SOURCES: Laws, 2000, ch. 623, § 5, eff from and after July 1, 2000.

§ 69-3-21. Seizures.

The commissioner may cause to be seized and held any lot of agricultural seed, mixtures of same, vegetable seed, flower seed, or tree and shrub seed found to be in violation of any of the provisions of this article until the law has been complied with and said violation otherwise legally disposed of. The inspectors of the state department of agriculture and commerce shall have power to enforce this section.

SOURCES: Codes, 1942, § 4397-11; Laws, 1964, ch. 204, § 11, eff from and after January 1, 1965.

§ 69-3-22. Procedure for complaint before council.

(1) As a prerequisite to filing a cause of action in court against a seedsman, a consumer who is damaged by the failure of agricultural, vegetable, flower or forest tree seed to properly produce or perform, as represented by the label or labeling whether related to specific representations on the label, other information on the seed container or conditions attributed to the quality of the seed, shall make a sworn complaint against such seedsman alleging damages sustained. The complaint shall be accompanied by documentation from a recognized professional verifying that there is a connection between the seed and the performance or production problem. The complaint shall be filed with the department and the department shall send a copy of the complaint to the seedsman by certified mail, within such time as to permit inspection of the crops, plants or trees by the seed arbitration council or its representatives and by the seedsman from whom the seed was purchased.

(2) Language setting forth the requirement for filing and serving the complaint shall be legibly typed or printed on the seed packages or the analysis label attached to the package containing such seed at the time of purchase by the consumer as follows:

"NOTICE: As a prerequisite to maintaining a legal action based upon the failure of seed to which this label is attached to properly produce or perform, as represented by the label or labeling, a consumer shall file a sworn complaint with the Commissioner of Agriculture and Commerce within such time as to permit inspection of the crops, plants or trees."

If language setting forth the requirement is not so placed on the seed package or analysis label, the filing and serving of a complaint under this section is not required.

(3) A filing fee of Two Hundred Fifty Dollars ($250.00) shall be paid to the department with each complaint filed. The fee shall be recovered from the dealer upon the recommendation of the arbitration council.

(4) Within fifteen (15) days after receipt of a copy of the complaint, the seedsman shall file with the department his answer to the complaint and serve a copy of the answer on the consumer by certified mail.

(5) The department shall refer the complaint and the answer to the council for investigation, findings and recommendations on the matters set out in the complaint. Upon receipt of the findings and recommendations of the council, the department shall transmit them to the consumer by certified mail.

(6) The consumer and seedsman shall give written notice to the department of the acceptance or rejection of the council's recommended terms of

settlement within thirty (30) calendar days from the date the recommended terms of settlement are issued by the arbitration council.

SOURCES: Laws, 2000, ch. 623, § 6, eff from and after July 1, 2000.

§ 69-3-23. Repealed.

Repealed by Laws of 1997, ch. 611, § 3, eff from and after July 1, 1997.

[Codes, 1892, § 1013; 1906, § 1090; Hemingway's 1917, § 816; 1930, § 839; 1942, § 2065; Laws, 1882, p. 141]

Editor's Note — Former § 69-3-23 required traders in seed cotton to keep a register of the names of all persons from whom they buy or procure by barter cotton.

Laws, 1997, ch. 611, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st 1997 Extraordinary Session of the Legislature on April 23, 1997.

§ 69-3-25. Penalties.

Any person who knowingly, or as a result either of gross negligence or of a failure to make a reasonable effort to inform himself of the pertinent facts, violates any provision of this act or the rules and regulations made and promulgated thereunder shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00). Nothing in this act shall be construed as requiring the Commissioner to recommend prosecution for minor violations of this act or the rules and regulations made and promulgated thereunder whenever he believes that the public interest will be adequately served by suitable written notice or warning.

SOURCES: Codes, 1942, § 4397-12; Laws, 1964, ch. 204, § 12; Laws, 2000, ch. 623, § 7; Laws, 2005, ch. 453, § 3, eff from and after passage (approved Mar. 29, 2005.)

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-3-27. Disposition of fees.

All fees collected by the Commissioner under this article, except those fees collected under Section 69-3-6, shall be paid to the State Treasurer who shall deposit the fees in the General Fund in the State Treasury.

SOURCES: Codes, 1942, § 4397-13; Laws, 1964, ch. 204, § 13; Laws, 1968, ch. 249, § 6; Laws, 1970, ch. 255, § 1; Laws, 2005, ch. 453, § 2, eff from and after passage (approved Mar. 29, 2005.)

§ 69-3-29. Administrative procedures; evidentiary hearings.

(1) When a written complaint is made against a person for violation of this article, or any of the rules or regulations, the commissioner, or his designee,

shall conduct a full evidentiary hearing. The complaint shall be in writing and shall be filed in the office of the department. The commissioner shall serve the accused with a copy of the complaint and a summons by any of the methods set forth in Rule 4 of the Mississippi Rules of Civil Procedure or by certified mail. Within thirty (30) days after receipt of the summons and a copy of the complaint, the accused shall file a written answer with the department. Upon receipt of the written answer of the accused, the matter shall be set for hearing before the commissioner within a reasonable time. If the accused fails to file an answer within the thirty (30) days, the commissioner may enter an order by default against the accused. The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Compliance with the subpoenas may be enforced by any court of general jurisdiction in this state. The testimony of witnesses shall be upon oath or affirmation, and they shall be subject to cross-examination. The proceedings shall be recorded. If the commissioner determines that the complaint lacks merit, he may dismiss same. If he finds that there is substantial evidence showing that a violation has occurred, he may impose any or all of the following penalties upon the accused: (a) levy a civil penalty in the amount of no more than Five Thousand Dollars ($5,000.00) for each violation; (b) revoke or suspend any license or permit issued to the accused under the terms of this article; (c) issue a stop sale order; (d) require the accused to relabel a lot of seed that he is offering or exposing for sale which is not labeled in accordance with this article; or (e) seize any lot of seed that is not in compliance with this article and destroy, sell or otherwise dispose of the seed and apply the proceeds of the sale to the costs and civil penalties levied with the balance to be paid to the accused. The decision of the commissioner, or his designee, shall be in writing, and it shall be delivered to the accused by certified mail.

(2) Either the accused or the department may appeal the decision of the commissioner to the circuit court of the county of residence of the accused or, if the accused is a nonresident of the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County, Mississippi. The appellant shall have the record transcribed and file it with the circuit court. The appeal shall otherwise be governed by all applicable laws and rules affecting appeals to circuit court. If no appeal is perfected within the required time, the decision of the commissioner shall then become final.

(3) The decision of the circuit court may then be appealed by either party to the Mississippi Supreme Court in accordance with the existing law and rules affecting such appeals.

(4) When any violation of this article, or the rules and regulations occurs, or is about to occur, that presents a clear and present danger to the public health, safety or welfare requiring immediate action, any of the department's field inspectors, and any other persons authorized by the commissioner may issue an order to be effective immediately before notice and a hearing that imposes any or all of the following penalties against the accused: (a) issue a stop sale order; (b) require the accused to relabel a lot of seed that he is offering or exposing for sale and which is not labeled in accordance with this article; or

(c) seize any lot of seed that is not in compliance with this article and destroy, sell or otherwise dispose of the seed and apply the proceeds of the sale to the cost and any civil penalties levied with the balance to be paid to the accused. The order shall be served upon the accused in the same manner that the summons and complaint may be served upon him. The accused shall then have thirty (30) days after service of the order upon him within which to request an informal administrative review before the Director of the Bureau of Plant Industry in the department, or his designee, who shall act as reviewing officer. If the accused makes a timely request, the reviewing officer shall conduct an informal administrative review within ten (10) days after the request is made. If the accused does not request an informal administrative review within the thirty (30) days, then he will be deemed to have waived his right to the review. At the informal administrative review, subpoena power shall not be available, witnesses shall not be sworn nor be subject to cross-examination and there shall be no court reporter or record made of the proceedings. Each party may present its case in the form of documents, oral statements or any other method. The rules of evidence shall not apply. The reviewing officer's decision shall be in writing, and it shall be delivered to the parties by certified mail. If either party is aggrieved by the order of the reviewing officer, he may appeal to the commissioner for a full evidentiary hearing in accordance with the procedures in subsection (1) of this section, except that there shall be no requirement for a written complaint or answer to be filed by the parties. The appeal shall be perfected by filing a notice of appeal with the commissioner within thirty (30) days after the order of the reviewing officer is served on the appealing party. The hearing before the commissioner, or his designee, shall be held within a reasonable time after the appeal has been perfected. Failure to perfect an appeal within the allotted time shall be deemed a waiver of such right.

(5) The procedures described herein shall not apply to seed arbitration claims which are described in Section 69-3-19, as such claims shall be governed by the procedures set forth in that statute.

SOURCES: Laws, 2000, ch. 623, § 8, eff from and after July 1, 2000.

ARTICLE 3.

SEED CERTIFICATION.

SEC.	
69-3-101.	Designation of state seed certifying agency.
69-3-103.	Designation of state seed board.
69-3-105.	State seed board; financial responsibility.
69-3-107.	Certification to be self-supporting.
69-3-109.	Advertising; tags.
69-3-111.	Prohibiting the state seed certifying agency from selling or processing certified seed.
69-3-113.	Rules and regulations.
69-3-115.	Appeals.
69-3-117.	Approval required for issuance, use, or circulation of certification.
69-3-119.	Enforcement of this article.

69-3-121. Penalties.

§ 69-3-101. Designation of state seed certifying agency.

The Commissioner of Agriculture and Commerce, the president of Mississippi State University of Agriculture and Applied Science, and the director of the agricultural and forestry experimental station of Mississippi State University of Agriculture and Applied Science are hereby vested with the full authority to designate a seed improvement association as the official state seed certifying agency for the State of Mississippi. Said officials are hereby further authorized, if they shall be satisfied at any time that the association acting as the official state seed certifying agency is not functioning in a manner conducive to the best interest of agriculture in this state, to terminate the appointment of such association, and to designate another seed improvement association as the official state seed certifying agency.

SOURCES: Codes, 1942, § 4398-01; Laws, 1952, ch. 170, § 1.

Cross References — Agricultural seeds, generally, see §§ 69-3-1 et seq.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 50.

CJS. 3 C.J.S., Agriculture § 2.

§ 69-3-103. Designation of state seed board.

There is hereby created a state seed board composed of the president of Mississippi State University of Agriculture and Applied Science, the director of the agricultural and forestry experiment station of Mississippi State University of Agriculture and Applied Science, the commissioner of agriculture and commerce of Mississippi, two (2) members to be selected and approved by and from the membership of the state certifying agency, one (1) member to be selected and approved by and from the membership of the Mississippi Seedmen's Association, and one (1) member to be selected and approved by and from the resident concerns and individuals engaged in the production of breeders registered planting seed in the State of Mississippi.

SOURCES: Codes, 1942, § 4398-02; Laws, 1952, ch. 170, § 2.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 50.

CJS. 3 C.J.S., Agriculture § 2.

§ 69-3-105. State seed board; financial responsibility.

Neither the state seed board, Mississippi State University of Agriculture and Applied Science, nor any of its divisions so represented shall be financially responsible for debts incurred by, damages inflicted by, or contracts broken by the official state seed certifying agency.

SOURCES: Codes, 1942, § 4398-03; Laws, 1952, ch. 170, § 3.

§ 69-3-107. Certification to be self-supporting.

The work of the official state seed certifying agency shall be on a self-supporting basis.

SOURCES: Codes, 1942, § 4398-04; Laws, 1952, ch. 170, § 3.

§ 69-3-109. Advertising; tags.

Every person, firm, association or corporation who shall issue, use or circulate any certificate, advertisement, tag, seal, poster, letterhead, marking circular, written or printed representation, or description of or pertaining to seeds, plants or plant parts or other farm products that may be defined by regulations intended for propagation or sale or sold or offered for sale wherein the words “Mississippi Certified,” or Mississippi State Certified, State Certified, or similar words or phrases are used or employed, or wherein are used or employed signs, symbols, maps, diagrams, pictures, words or phrases expressly or impliedly stating or representing that such seeds, plants or plant parts or other farm products comply with or conform to the certification standards or requirements as made by the approved state seed certifying agency of Mississippi, shall be subject to the provisions of this article, provided that this article shall not apply to the certification of plants or plant products for freedom from disease or insects which is now conducted under the authority of the Commissioner of Agriculture and Commerce. Every issuance, use, or circulation of any certificate or any other instrument as in this section above described shall be deemed to be “certification” as this term is employed in this article.

SOURCES: Codes, 1942, § 4398-05; Laws, 1952, ch. 170, § 5; Laws, 2002, ch. 398, § 1, eff from and after July 1, 2002.

Cross References — Labeling requirements for agricultural seeds, see § 69-3-5.

§ 69-3-111. Prohibiting the state seed certifying agency from selling or processing certified seed.

The state seed certifying agency shall not have the power to engage in the sale or processing of seeds, plants or plant parts or other farm products or to designate any agency or individual for these purposes except that the state seed certifying agency may promote the sale of certified seeds in general through advertising.

SOURCES: Codes, 1942, § 4398-06; Laws, 1952, ch. 170, § 6; Laws, 2002, ch. 398, § 2, eff from and after July 1, 2002.

§ 69-3-113. Rules and regulations.

The duly approved state seed certifying agency is hereby vested with the full authority to establish, create and specify rules and regulations for the designation of seeds, plants and plant parts and other farm products as certified or Mississippi certified to be grown, harvested, offered for sale or distributed. Such rules and regulations shall be approved by the state seed board before becoming effective. No seeds, plants or plant parts or other farm products grown or to be grown in Mississippi shall be eligible for certification hereunder except by full compliance as to standards, requirements and forms of or for certification as may be made by the duly approved state seed certifying agency. No certification within the provisions of this article shall be made or authorized except through the approved state certifying agency as herein provided.

SOURCES: Codes, 1942, § 4398-07; Laws, 1952, ch. 170, § 7; Laws, 2002, ch. 398, § 3, eff from and after July 1, 2002.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 50.

CJS. 3 C.J.S., Agriculture § 2.

§ 69-3-115. Appeals.

Any person desiring a change in the rules and regulations or to appeal from the action of the state seed certifying agency shall have the right of a hearing either in person or by attorney before a board of appeals composed of the state commissioner of agriculture and commerce, the director of the agricultural and forestry experiment station of Mississippi State University of Agriculture and Applied Science, and the president of Mississippi State University of Agriculture and Applied Science, at such time and place as the board chairman shall designate. The director of the agricultural and forestry experiment station of Mississippi State University of Agriculture and Applied Science shall serve as chairman of the board. The aggrieved party may appeal to the circuit court of the county wherein he may reside and bond shall be given to cover court costs within ten days after rendition of the order of the said board, upon which appeal is made.

SOURCES: Codes, 1942, § 4398-08; Laws, 1952, ch. 170, § 8.

§ 69-3-117. Approval required for issuance, use, or circulation of certification.

It shall be unlawful for any person, firm, association or corporation to issue, make, use, or circulate any certification as defined in this article without the authority or approval of the approved state seed certifying agency.

SOURCES: Codes, 1942, § 4398-09; Laws, 1952, ch. 170, § 9.

§ 69-3-119. Enforcement of this article.

The Commissioner of Agriculture and Commerce of Mississippi is hereby vested with the responsibility for enforcing the provisions of this article.

SOURCES: Codes, 1942, § 4398-09; Laws, 1952, ch. 170, § 9.

§ 69-3-121. Penalties.

(1) Except as otherwise provided in subsection (2) of this section, every person, firm, association or corporation who shall violate any of the provisions of this article pertaining to certification shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than $25.00, nor exceeding $500.00, for each offense, and be denied the right to apply for further certification within such period as the court may determine, not exceeding 1 year.

(2) Any person who, with the intent to injure, defraud or mislead, shall alter, erase, raise, obliterate, destroy, forge, substitute, disfigure in any manner, or remove from the package, container, wrappings or bale to which it is attached, any certificate, specification, or certification of any seed improvement association organized under the laws of this state, disclosing or in any manner pertaining to the grade, quality, quantity, or condition of any agricultural field seed or seeds or any cotton or cotton lint, shall be guilty of a misdemeanor, and on conviction shall be fined not less than Twenty-five Dollars ($25.00), nor more than Five Hundred Dollars ($500.00), or imprisoned in the county jail for not more than twelve months, or both.

SOURCES: Codes, 1942, §§ 4397-31, 4398-09; Laws, 1946, ch. 461, § 1; Laws, 1952, ch. 170, § 9.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 5

Fairs; Stock Shows; Improvement of Livestock

Article 1. Mississippi Fair Commission and State Fair Grounds .. 69-5-1
Article 3. Stock Shows and Improvement of Livestock 69-5-101

Article 1.

Mississippi Fair Commission and State Fair Grounds.

Sec.

69-5-1. Mississippi Fair Commission created.
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69-5-23. Revenue bonds; negotiability.
69-5-25. Revenue bonds; sections constitute full authority for issuance; validation.
69-5-27. Mississippi Fair Commission authorized to borrow.
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§ 69-5-1. Mississippi Fair Commission created.

In order to promote agricultural and industrial development in Mississippi and to encourage the farmers to grow better livestock and agricultural products, there is hereby created a body politic and corporate to be hereafter known as the "Mississippi Fair Commission," which said body politic and corporate shall be under the management and control of said commission to be named by the Governor as follows: The Commissioner of Agriculture and Commerce, chairman, the director of the Mississippi Extension Service, president of the Mississippi Livestock Association, the director of Mississippi Vocational Education, and a representative of Mississippi Association of Fairs, a representative of the Agricultural and Industrial Board, and a representative of the City Commission of Jackson, Mississippi, all to serve four years without salary compensation. Should a vacancy occur by resignation or death, the Governor shall appoint a successor.

SOURCES: Codes, 1942, § 4435-50; Laws, 1946, ch. 295, §§ 1-6; Laws, 1958, ch. 140, § 1.

Editor's Note — Section 57-1-2 provides that the words "Agricultural and Industrial Board" shall mean the "Department of Economic and Community Development".

Section 57-1-54 provides that the Mississippi Development Authority shall be the Department of Economic and Community Development, and that whenever the term "Mississippi Department of Economic and Community Development," "Mississippi Department of Economic Development," or any variation thereof, appears in any law the same shall mean the Mississippi Development Authority.

Cross References — Livestock shows, generally, see §§ 69-5-101 et seq.

§ 69-5-3. Powers and duties of Mississippi Fair Commission.

(1) The Mississippi Fair Commission shall set up rules and regulations consistent with the law governing the distribution of state monies for premiums or awards. It will be the duty of the commission to meet at the call of the chairman, at least twice each year, to approve premium lists or awards, and give out rules governing participants in state premium money in Mississippi. The commission may invite the presidents of the various district livestock shows before the commission when determining policies affecting district livestock shows.

(2) The Mississippi Fair Commission is hereby authorized to accept money or funds donated to or to be awarded as prizes under regulations promulgated by the commission.

(3) The Mississippi Fair Commission shall have charge of designated state lands and buildings, and have full power and authority in perfecting plans and causing to be held an agricultural and industrial exposition annually, and other events from time to time on those lands and located for the promotion of Mississippi agriculture and industry.

(4) The Mississippi Fair Commission is hereby authorized to employ an attorney as prescribed in Section 69-1-14.

(5) The Mississippi Fair Commission may take any action authorized in Section 1 of Laws 2000, Chapter 306.

(6) The Mississippi Fair Commission may allow a commercial, charitable or governmental entity to use, publish and advertise such entity's name in connection with any of the buildings on the State Fairgrounds in Jackson, except for the Kirk Fordice Equine Center or any of the events conducted on the State Fairgrounds in return for a monetary consideration paid to the commission. Those funds received from an entity for allowing its name to be used, published or advertised in connection with the buildings or events shall be retained by the commission for capital improvements to the fairgrounds, except that not less than fifteen percent (15%) of such consideration shall be distributed annually to the Livestock Shows Fund that, by this subsection, is created in the State Treasury for premiums or awards in county, district and state livestock shows and the State High School Rodeo Finals. Those funds received from an entity for allowing its name to be used, published or advertised in connection with the Dixie National Livestock Show and Rodeo shall be retained by the Fair Commission for capital improvements except One Hundred Thousand Dollars ($100,000.00) may be used annually for advertising, promoting, premiums, awards and entertainment acts for the Dixie National Livestock Show and Rodeo. The commission shall not enter into any

such agreement with any vendor whose products are illegal for participation in or use by persons eighteen (18) years of age and under.

(7) The Mississippi Fair Commission shall report by January 1 of each year a detailed financial statement of all monies received and expended under subsection (6) of this section to the Lieutenant Governor, the Speaker of the House of Representatives and the Chairman of the Senate Agriculture Committee and the Chairman of the House of Representatives Agriculture Committee.

SOURCES: Codes, 1942, § 4435-50; Laws, 1946, ch. 295, §§ 1-6; Laws, 1958, ch. 140, § 1; Laws, 1983, ch. 365, § 3; Laws, 2000, ch. 306, § 2; Laws, 2001, ch. 579, § 1; Laws, 2012, ch. 360, § 1, eff from and after passage (approved Apr. 17, 2012.)

Editor's Note — Laws, 2001, ch. 579, § 2, provides:

"SECTION 2. The contract for the naming rights of any coliseum entered into before the effective date of this act [July 1, 2001], including, but not limited to, the contract for naming rights of a coliseum in a municipality with a population of thirty thousand (30,000) or more in a county where Highways 78 and 45 intersect, is hereby ratified and affirmed."

Amendment Notes — The 2012 amendment in (6), rewrote the first sentence, substituted "buildings or events" for "Mississippi Coliseum, the State Fair" in the second sentence, and deleted the former third sentence which read: "The Mississippi Fair Commission may spend up to ten percent (10%) of the total consideration received from an entity that uses, publishes and advertises such entity's name in connection with the Mississippi Coliseum or the State Fair for advertising, promoting and entertainment acts."

Cross References — Provisions relative to charges for admission to the State Fair and use of proceeds, see § 69-5-11.

Livestock shows, generally, see §§ 69-5-101 et seq.

ATTORNEY GENERAL OPINIONS

Commission has authority to lease facilities under control of Commission to private parties as long as activities conducted therein are open to public and in public interest; this same rule applies to equipment under control of Commission; Commission has authority to establish priority in usage of such equipment to civic groups and other public interest usage over general commercial usage. Orr, March 14, 1990, A.G. Op. #90-0165.

Miss. Code Section 69-5-3 grants Fair Commission authority to charge admission to state fair, and directs that all admission funds shall be utilized for improvements on state fairgrounds; from this broad grant of authority, and in absence of legislation to contrary, Fair Commission has authority to enter into exclusive soft drink beverage contract for state properties under its control, so long as funds so generated are utilized for improvements on fairgrounds. Ross, Jan. 3, 1993, A.G. Op. #92-1016.

A city council has no authority to ban gun shows on the Mississippi State Fairgrounds. White, June 2, 2006, A.G. Op. 06-0220.

§ 69-5-5. Executive secretary of Mississippi Fair Commission.

The Mississippi Fair Commission may name an executive secretary and assign duties, who shall be required to keep full and complete minutes of the commission's action and give full and detailed reports of livestock shows and fairs participating in premium monies, for report to the Governor and Legislature.

SOURCES: Codes, 1942, § 4435-50; Laws, 1946, ch. 295, §§ 1-6; Laws, 1958, ch. 140, § 1.

Cross References — Powers and duties of State Fair Commission, see § 69-5-3. Livestock shows, generally, see §§ 69-5-101 et seq.

§ 69-5-7. Headquarters of Mississippi Fair Commission.

Headquarters of the Mississippi Fair Commission shall be in connection with the office of the state department of agriculture and commerce.

SOURCES: Codes, 1942, § 4435-50; Laws, 1946, ch. 295, §§ 1-6; Laws, 1958, ch. 140, § 1.

§ 69-5-8. "Kirk Fordice Equine Center" designated.

The building under the jurisdiction of the Mississippi Fair Commission, that is located in Jackson, Mississippi, and used primarily as an arena for rodeo and livestock expositions and related events, shall be named the Kirk Fordice Equine Center. The Mississippi Fair Commission shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the Kirk Fordice Equine Center, that states the background, accomplishments and service to the state of Governor Kirk Fordice.

SOURCES: Laws, 2005, ch. 301, § 1, eff from and after passage (approved Feb. 10, 2005.)

§ 69-5-9. Effect of Sections 69-5-1 through 69-5-9 on livestock shows.

Nothing in Sections 69-5-1 through 69-5-9 shall be construed to mean a change in the location or limit the number of district or divert any appropriation made by the Legislature to the various livestock shows in Mississippi now set up and designated by law.

SOURCES: Codes, 1942, § 4435-50; Laws, 1946, ch. 295, §§ 1-6; Laws, 1958, ch. 140, § 1.

Cross References — Livestock shows, generally, see §§ 69-5-101 et seq.

§ 69-5-11. Admission charges to State Fair.

(1) The Mississippi Fair Commission created by Section 69-5-1 shall charge for admission to the State Fair. The proceeds thereof shall be used for the repayment of revenue bonds issued for the purpose of constructing, equipping and furnishing new buildings and making improvements on the State Fairgrounds.

(2) Funds collected in excess of those required to retire any outstanding bond indebtedness may be used as operating revenue for the Mississippi Fair Commission, and such excess funds received by the Fair Commission shall be deposited in its special fund account.

(3) The State Treasurer is hereby directed to invest such excess funds to the credit of the Mississippi Fair Commission's special account.

SOURCES: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1; Laws, 1985, ch. 339, eff from and after July 1, 1985.

Cross References — Power of Dept. of Finance and Administration to issue revenue bonds, see §§ 31-11-3 et seq.

Validation of bonds, generally, see §§ 31-13-1 et seq.

Commercial paper under the Uniform Commercial Code, see §§ 75-3-101 et seq.

§ 69-5-13. Requests for improvement of State Fair grounds.

The Mississippi Fair Commission is hereby authorized and empowered, in its discretion, to declare by resolution the number and type buildings which need to be constructed and the type improvements that need to be made on the state fairgrounds, and file a certified copy of said resolution with the State Building Commission. If the State Building Commission believes such construction and improvements to be in the best public interest, and that receipts from admission to the State Fair reasonably shall be expected to produce sufficient revenues over a period not to exceed twenty (20) years to retire bonds issued to pay the cost of such improvements as well as the interest thereon, it may, in its discretion, approve the request of the Mississippi Fair Commission.

SOURCES: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1, eff from and after passage (approved April 8, 1971).

Editor's Note — Section 31-11-1 provides that the term "State Building Commission" or "Building Commission" wherever it appears in the laws of Mississippi shall be construed to mean the Governor's Office of General Services.

Laws, 1994, ch. 454, § 1, eff from and after July 1, 1994, provides as follows:

"SECTION 1. The Department of Finance and Administration is hereby authorized and empowered to convey to the State Fair Commission for additional state fairgrounds all of the right, title, and interest in Seat of Government Tracts Z, Y, 11B and 14, being situated in the City of Jackson, First Judicial District of Hinds County, Mississippi, and more particularly described as follows, to-wit:

Parcel Z.

Beginning at the intersection of the west right-of-way line of the Illinois Central Gulf's 100-foot railroad right-of-way and the east right-of-way line of Jefferson Street as it now exists on the west boundary of Rhodes Subdivision, Block 17. From said point of beginning, run thence northerly along the east line of Jefferson Street 185 feet to a point; thence turning through a 90 degree angle, run easterly approximately 80 feet to a point on the west line of the Illinois Central Gulf's 100-foot railroad right-of-way; thence run southwesterly along the west line of the said right-of-way to the point of beginning, it being the intent to include with this description all of that property with improvements thereon, owned by the State of Mississippi lying adjacent to and west of the Illinois Central Gulf Railroad 100-foot right-of-way, adjacent to and east of Jefferson Street and lying adjacent to and south of a parallel line drawn from a point 185 feet north of the intersection of the east right-of-way line of Jefferson Street and the west line of the right-of-way of the Illinois Central Gulf Railroad, within the City of Jackson, Mississippi.

Parcel Y.

Beginning at the intersection of the east right-of-way line of the Illinois Central Gulf's 100-foot railroad right-of-way and the north right-of-way line of Mississippi Street as it now exists; from said point of beginning, run thence easterly along the north line of Mississippi Street to the point that the said line intersects with the west right-of-way line of Camp Street. From said point run northerly along the west line of said Camp Street to a point where the west line of Camp Street intersects with the east line of the Illinois Central Gulf's 100-foot railroad right-of-way; from said point run thence southwesterly along said east line of the railroad right-of-way to the point of beginning, it being the intent of the lessor to include with this description all of that property with improvements thereon, owned by the State of Mississippi lying adjacent of and east of the Illinois Central Gulf Railroad 100-foot right-of-way, adjacent to and north of Mississippi Street, adjacent to and west of Camp Street, within the City of Jackson, Mississippi.

Parcel 11B.

Beginning at a point on the south line of High Street, which point is a distance of 362.64 feet measured easterly and along the south line of High Street from the intersection of the south line of High Street with the east line of Jefferson Street; run thence west and along the southern line of High Street for a distance of 98.64 feet to the western line of said Lot 3 of Block 15 of East Jackson; turn thence to the left through a deflection angle of 88 degrees 55 minutes and run thence southerly parallel with the eastern line of Jefferson Street and along the western line of said Lot 3 for a distance of 350 feet to a point on the northern line of College Street; thence turn to the left through a deflection angle of 91 degrees 05 minutes and run easterly and along the northern line of College Street for a distance of 14.9 feet to a point which is 6 feet northwesterly from the western rail of a railroad spur track; thence traversing a line parallel with and 6 feet northwesterly from the western rail of the aforesaid railroad spur tract as follows; by turning thence to the left through a deflection angle of 63 degrees 02 minutes from the last described course and run northeasterly for a distance of 50 feet; thence turning to the left through a deflection angle of 3 degrees 50 minutes and run northeasterly for a distance of 50 feet; turn thence to the left through a deflection angle of 5 degrees 33 minutes and run northerly for a distance of 50 feet; turn thence to the left through a deflection angle of 5 degrees 34 minutes and run northerly for a distance of 63 feet; turn thence to the left through a deflection angle of 4 degrees 51 minutes and run northerly for a distance of 151.15 feet to the point of beginning.

Parcel 14.

All of Lot Three (3), the South half of Lot Two (2), and a strip of land 17 feet in width off of the entire North side of Lot Four (4), all in Block or Square One (1) of Dr. J. H. Rhodes Subdivision of Lots One (1), Two (2), Three (3), and Four (4) of Square Seventeen (17) North; according to the map or plat of said subdivision which is on file and of record in the office of the Chancery Clerk of Hinds county at Jackson, Mississippi, in Surveyor's Record Book "A" at Page 303 thereof, reference to which is hereby made in aid of and as a part of this description.

Laws, 1994, ch. 487, § 1, eff from and after passage (approved March 22, 1994), provides as follows:

"SECTION 1. (1) The State Fair Commission, with the assistance of the Department of Finance and Administration, is authorized to acquire with any funds made available to the State Fair Commission by the Legislature, or by other sources, and upon the conditions hereinafter set forth, certain land located adjacent to the State Fairgrounds, in the City of Jackson, Mississippi. That certain land having the street address of 1000 Mississippi Street is more particularly described as follows:

"Lot Twelve (12), Square Two (2), of RHODES SUBDIVISION, and a strip of land 21 feet wide off the West side of the South 180 feet of Lot Five (5) of 5.94 acre Lot 17, North Jackson, according to a map or plat of said Rhodes Subdivision, and also according to the official map of the City of Jackson, Mississippi, both of which are recorded in the office of the Chancery Clerk of Hinds County, at Jackson, Mississippi.

"(2) Consideration for the purchase of the above described property shall not exceed the average of the fair market price for such real property as determined by two (2) professional property appraisers selected by the Department of Finance and Administration and certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board. Appraisal fees shall be paid by the State Fair Commission."

Cross References — Powers to Dept. of Finance and Administration, see §§ 31-11-3 et seq.

Validation of bonds, generally, see §§ 31-13-1 et seq.

Issuance of revenue bonds for improvements on state fair grounds, see § 69-5-15.

§ 69-5-15. Revenue bonds; issuance for improvement on state fair grounds.

(1) The words "revenue bonds" shall be deemed to mean bonds payable solely from the net revenue received by the Mississippi Fair Commission.

The Department of Finance and Administration shall have power and is hereby authorized, at one time or from time to time by resolution, to authorize the issuance of negotiable revenue bonds to provide funds for the purpose of paying all or any part of the cost of construction and/or improvements requested by the Mississippi Fair Commission pursuant to Section 69-5-13, or the cost of any purchase of property or improvements thereon pursuant to Section 17-17-49, but in no event shall the amount of such bonds outstanding at any one time exceed Four Million Dollars ($4,000,000.00); and shall cause a certified copy of such resolution to be delivered to the State Bond Commission. No bonds shall be issued under this section after April 23, 2008. Upon the receipt of said authorizing resolution, the State Bond Commission, acting as the issuing agent, shall issue and sell the revenue bonds of the State of Mississippi when authorized at the time and in the amount indicated in said resolution, prescribe the form of the bonds, advertise for and accept bids therefor, issue and sell the bonds, and do any and all other things necessary and advisable in the issuance and sale of said bonds. The principal of and the interest on such revenue bonds shall be payable solely from a special fund to be provided for that purpose from the net revenue received by the Mississippi Fair Commission. Such bonds shall bear date or dates, be in such denomination or denominations, bear interest at such rate or rates, provided that the bonds of any issue shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103, be payable at such place or places within or without the State of Mississippi, shall mature at such time or times, be redeemable prior to maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by the State Bond Commission. Such bonds shall mature in annual installments beginning not more than three (3) years from date thereof and extending not more than twenty (20) years from date thereof. Such bonds shall be signed by the

Chairman of the State Bond Commission, or by his facsimile signature, and the official seal of the State Bond Commission shall be affixed thereto, and attested by the Secretary of the State Bond Commission. The interest coupons, if any, to be attached to such bonds or other certificates thereon may be executed by the facsimile signatures of said officers. Whenever any such bonds shall have been signed by the officials herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

(2) No bonds shall be issued under the authority of this section prior to February 1, 1983; thereafter such bonds may be issued provided that the expansion and other improvements of the Mississippi Industrial Showcase and Trade Mart Building shall have priority in the use of the proceeds of such bonds and provided that the Department of Finance and Administration has approved plans to increase the size of such building by at least fifty percent (50%).

SOURCES: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1; Laws, 1981, ch. 514, § 2; Laws, 1982, ch. 396, § 1; Laws, 1983, ch. 480, § 1; Laws, 1985, ch. 477, § 15; Laws, 2008, ch. 504, § 4, eff from and after passage (approved Apr. 23, 2008.)

Cross References — Establishment and duties of state bond advisory division, see § 7-1-401 et seq.

Validation of bonds, generally, see §§ 31-13-1 et seq.

§ 69-5-17. Revenue bonds; sale, payment and redemption.

The State Bond Commission may sell the bonds referred to in Section 69-5-15 in such manner and for such price as it may determine to be for the best interest of the State of Mississippi, but no such sale shall be made at a price less than par plus accrued interest to date of delivery of the bonds to the purchaser. Notice of the sale of any such bonds shall be published at least one (1) time not less than twenty-one (21) days prior to the date of sale and shall be so published in one or more newspapers in Jackson, Mississippi, and having general circulation within the State of Mississippi, and in one or more other newspapers or financial journals as may be directed by the State Bond Commission.

The State Bond Commission, when issuing any bonds under the authority of Sections 69-5-11 through 69-5-27, shall provide that bonds maturing ten (10) years after the date of the issuance of such bonds may, at the option of the State Treasurer of the State of Mississippi, be called in for payment and redemption on any interest payment date thereafter prior to maturity.

SOURCES: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1; Laws, 1993, ch. 472, § 4, eff from and after passage (approved March 27, 1993).

Cross References — Validation of bonds, generally, see §§ 31-13-1 et seq.

§ 69-5-19. Revenue bonds; disposition of proceeds; additional bonds in case of deficit.

The proceeds of bonds sold pursuant to Section 69-5-17 shall be paid into the state treasury to the credit of a special fund known as the State Fair Fund, and shall be used solely for payment of the cost of the project or combined projects, and shall be disbursed upon order of the State Building Commission under such restrictions, if any, as the resolution authorizing the issuance of the bonds may provide. Provided, however, that any surplus in the State Fair Fund over and above the requirements to meet the payments on outstanding bonds and interest thereon when due may, in the discretion of the State Bond Commission, be invested in United States Government bills, notes or bonds, Mississippi General Obligation Bonds, Mississippi Revenue Bonds, Mississippi State Highway Bonds, or in bonds of any municipality or any county in Mississippi; and, upon the sale thereof, the entire proceeds of the sale, including all earnings from the investment, shall be paid into the State Fair Fund. If the proceeds of bonds sold pursuant to Section 69-5-17, by error of calculation or otherwise, shall be less than the cost of the project or combined projects, unless otherwise provided in the resolution authorizing the issuance of the bonds, additional revenue bonds may in like manner be issued to provide the amount of such deficit which, unless otherwise provided in the resolution authorizing the issuance of the bonds, shall be deemed to be one of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose; provided, that in no event shall the outstanding bonds total more than Seven Hundred Fifty Thousand Dollars ($750,000.00). If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which the bonds were issued, the surplus shall be paid into the fund established for the payment of the principal of and the interest on such bonds.

SOURCES: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1, eff from and after passage (approved April 8, 1971).

Editor's Note — Section 31-11-1 provides that the term "State Building Commission" or "Building Commission" wherever it appears in the laws of Mississippi shall be construed to mean the Governor's Office of General Services.

§ 69-5-21. Revenue bonds; state not obligated by issuance.

Revenue bonds issued under the provisions of Sections 69-5-15 and 69-5-19 shall not be deemed to constitute a debt of the State of Mississippi or a pledge of the full faith and credit of the state, but such bonds shall be payable solely from the special revenues provided therefor as hereinabove set forth, and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or pledge any form of taxation whatever therefor, and all such bonds shall contain recitals on their face substantially covering the foregoing provisions of this section.

SOURCES: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1, eff from and after passage (approved April 8, 1971).

Cross References — Validation of bonds, generally, see §§ 31-13-1 et seq.

§ 69-5-23. Revenue bonds; negotiability.

All bonds issued under the provisions of Sections 69-5-15 and 69-5-19 shall constitute negotiable instruments within the meaning of the Uniform Commercial Code of the State of Mississippi.

SOURCES: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1, eff from and after passage (approved April 8, 1971).

§ 69-5-25. Revenue bonds; sections constitute full authority for issuance; validation.

Revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by Sections 69-5-13 through 69-5-25. The bonds authorized under the authority of said sections shall be validated in the chancery court of Hinds County, Mississippi, in the manner and with the force and effect provided now or hereafter by Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, for the validation of county, municipal, school district, and other bonds. The necessary papers for such validation proceedings shall be transmitted to the State Bond Attorney by the secretary of the State Bond Commission, and the required notice shall be published in a newspaper in the City of Jackson, having a general circulation within the State of Mississippi. Any resolution providing for the issuance of revenue bonds under the provisions of Sections 69-5-13 through 69-5-25 shall become effective immediately upon its adoption by the State Building Commission and need not be published or posted, and any such resolution may be adopted at any regular, special, or adjourned meeting of the State Building Commission by a majority of its members.

SOURCES: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1, eff from and after passage (approved April 8, 1971).

Editor's Note — Section 31-11-1 provides that the term "State Building Commission" or "Building Commission" wherever it appears in the laws of Mississippi shall be construed to mean the Governor's Office of General Services.

§ 69-5-27. Mississippi Fair Commission authorized to borrow.

The Mississippi Fair Commission, created by Section 69-5-1, shall have the power and authority, in its discretion, to borrow money from any bank or banks in an amount not in excess of Two Hundred Thousand Dollars ($200,000.00), to be used for the repair, renovation or maintenance of buildings located at the Mississippi State Fairgrounds. The Fair Commission may use any funds accruing to it to service and retire said indebtedness. Such loan shall not exceed a term of ten (10) years and shall bear interest at a rate not in excess of that provided for in Section 75-17-101.

Any loan secured under the provisions of this section shall be approved by the State Bond Commission.

SOURCES: Codes, 1942, § 4435-50.3; Laws, 1956, ch. 143, §§ 1-8; Laws, 1958, ch. 142; Laws, 1962, ch. 155; Laws, 1966, ch. 224, § 1; Laws, 1968, ch. 236, § 1; Laws, 1971, ch. 501, § 1; Laws, 1986, ch. 442, eff from and after July 1, 1986.

§ 69-5-29. Free passes prohibited.

The Mississippi State Fair Commission may by regulation establish policies for the issuance of free passes. These policies shall not prohibit officials of the fair or designated authority from entering said places for inspection purposes; shall not apply to press reporters designated to report news items; and shall not prohibit the commission from declaring specified days, such as Press Day, Legislator's Day, or any other special day.

SOURCES: Codes, 1942, § 4435-50.5; Laws, 1954, ch. 160, §§ 1, 2 [¶¶ 1-2]; Laws, 1985, ch. 331, eff from and after passage (approved March 15, 1985).

Cross References — Powers and duties of State Fair Commission, see § 69-5-3.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 3.

STOCK SHOWS AND IMPROVEMENT OF LIVESTOCK.

SEC.	
69-5-101.	Mississippi Livestock Show; creation; directors.
69-5-103.	Livestock show districts.
69-5-105.	Holding of livestock shows.
69-5-107.	Dairy shows.
69-5-109.	Roundup shows.
69-5-111.	Prizes or awards.
69-5-113.	Supervisors may appropriate money in aid of livestock shows.
69-5-114.	Certain livestock shows to be held at no charge for use of facilities [Repealed effective July 1, 2015].

69-5-115. Mississippi Delta Livestock Fair Association; creation; holding of livestock shows; prizes and awards.
69-5-117. Mississippi Delta Livestock Fair Association; appropriations by supervisors.
69-5-119. Mississippi Delta Livestock Fair Association; supervisors may levy tax.
69-5-121. Bulls for breeding; maintenance by certain counties; defrayal of expenses.

§ 69-5-101. Mississippi Livestock Show; creation; directors.

In order to encourage and promote the raising of livestock and dairy stock in the state, there is hereby created a body politic and corporate to be hereafter known as "Mississippi Livestock Show" which said body politic and corporate shall be under the management and control of the commissioner of agriculture and commerce, director of extension service, and president of Mississippi Livestock Council, hereinafter designated as directors, who shall serve without compensation.

SOURCES: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch. 346, § 1; Laws, 1972, ch. 359, § 1; Laws, 1973, ch. 300, § 1(a), eff from and after passage (approved January 22, 1973).

Cross References — Mississippi State Fair Commission, see §§ 69-5-1 et seq.
Commission for agricultural and industrial expositions, see §§ 69-5-1 et seq.

ATTORNEY GENERAL OPINIONS

The "Rules Committee" mentioned in rules and regulations of the Livestock Show Directors does not have authority to render final decisions related to livestock shows or to regulate participation in these shows. Spell, Sept. 23, 2005, A.G. Op. 05-0482.

RESEARCH REFERENCES

ALR. Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-103. Livestock show districts.

For the purposes of this article, the State of Mississippi is hereby divided into five (5) livestock show districts, as follows:

(a) The Northwest District, which shall embrace the Counties of Coahoma, DeSoto, Grenada, Lafayette, Marshall, Panola, Quitman, Tallahatchie, Tate, Tunica and Yalobusha Counties. The place for holding the livestock show shall be at Batesville, in Panola County.

(b) The North Delta District, which shall embrace the Counties of Attala, Bolivar, Carroll, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Sharkey, Sunflower and Washington Counties. The place for holding the livestock show shall be at Greenwood, in Leflore County.

(c) The Northeast District, which shall embrace the Counties of Alcorn, Benton, Calhoun, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Noxubee, Oktibbeha, Pontotoc, Prentiss, Tippah, Tishomingo, Union, Webster and Winston. The place for holding the livestock show shall be at Verona, in Lee County.

(d) The Southwest District, which shall embrace the Counties of Adams, Amite, Claiborne, Copiah, Franklin, Hinds, Jefferson, Lawrence, Leake, Lincoln, Madison, Neshoba, Newton, Pike, Rankin, Scott, Simpson, Smith, Walthall, Warren, Wilkinson and Yazoo. The place for holding the livestock show shall be at Jackson, in Hinds County.

(e) The Southeast District, which shall embrace the counties of Clarke, Covington, Forrest, George, Greene, Hancock, Harrison, Jackson, Jasper, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Marion, Pearl River, Perry, Stone and Wayne. The place for holding the livestock show shall be at Hattiesburg, in Forrest County.

SOURCES: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch. 346, § 1; Laws, 1972, ch. 359, § 1; Laws, 1973, ch. 300, § 1(b); Laws, 1995, ch. 370, § 1, eff from and after July 1, 1995.

RESEARCH REFERENCES

ALR. Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-105. Holding of livestock shows.

(1) There shall be held at the place named in each district a livestock show once each year at a time to be fixed by the directors, and under the supervision and rules and regulations promulgated by said directors at which the owners of livestock within the district where the livestock show is held may exhibit and compete for prizes or awards offered by the directors of such livestock shows or for prizes or awards offered by any person or corporation, through the directors, upon complying with the regulations governing such livestock show.

(2) If the building for holding the livestock show in the place designated in Section 69-5-103 is damaged or destroyed by fire, storm or other disaster, then the directors are authorized to allow for holding the show at another place in the district until building in the designated place be repaired or reconstructed.

SOURCES: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch 346, § 1; Laws, 1973, ch. 300, § 1(c, 9), eff from and after passage (approved January 22, 1973).

Cross References — Mississippi State Fair Commission, see §§ 69-5-1 et seq.
Commission for Agricultural and Industrial Expositions, see §§ 69-5-1 et seq.
Spraying of animal areas at state fairs to prevent disease, see § 69-15-103.

RESEARCH REFERENCES

ALR. Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-107. Dairy shows.

Dairy shows shall be held, in addition to the livestock shows, each fall at Verona in Lee County, at Newton in Newton County, Tylertown in Walthall County, and at Columbia in Marion County, and each summer at the Neshoba County Fair in Neshoba County, and any person in the state is entitled to participate in any of the dairy shows. The dairy shows shall be supervised and handled in the same manner as provided for livestock shows in Section 69-5-105, and each of the five (5) dairy shows herein provided for shall receive such part of the monies appropriated for the Mississippi Livestock Show as shall be specified in the act making such appropriation.

SOURCES: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch. 346, § 1; Laws, 1972, ch. 359, § 1; Laws, 1973, ch. 300, § 1 (d); Laws, 1979, ch. 335, § 1; Laws, 1995, ch. 370, § 2; Laws, 2002, ch. 476, § 1, eff from and after July 1, 2002.

Cross References — Commission for Agricultural and Industrial Expositions, see §§ 69-5-1 et seq.
Mississippi State Fair Commission, see § 69-5-1.

RESEARCH REFERENCES

ALR. Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-109. Roundup shows.

A roundup show shall be held, in addition to the livestock and dairy shows, once each year at a time and place to be fixed by the directors mentioned in Section 69-5-101, and under the supervision and rules and regulations promulgated by said directors. At such roundup show the owners of any livestock, who have won prizes or awards within the immediately preceding twelve months in any of the livestock or dairy shows referred to in this article may exhibit such livestock and compete for prizes or awards offered by the directors of such livestock shows or for prizes or awards offered by any person or corporation, through the directors, upon complying with the regulations governing such roundup show. The roundup shall be held in the district agreeing to pay the expense thereof.

SOURCES: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch. 346, § 1, eff from and after July 1, 1971.

Cross References — Commission for Agricultural and Industrial Expositions, see §§ 69-5-1 et seq.

Mississippi State Fair Commission, see § 69-5-1.

Spraying for animal areas at state fairs to prevent disease, see § 69-15-103.

RESEARCH REFERENCES

ALR. Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-111. Prizes or awards.

The directors mentioned in Section 69-5-101 are hereby authorized to accept and hold for the use of the Mississippi Livestock Show or the dairy shows or the roundup show any appropriation, donation, or other fund donated to or to be awarded as prizes or awards under regulations promulgated by the directors.

SOURCES: Codes, 1942, § 4905; Laws, 1938, ch. 183; Laws, 1940, ch. 217; Laws, 1946, ch. 251, §§ 1-6; Laws, 1948, chs. 195 (paragraph 4, supra) 218 (paragraph 2, supra); Laws, 1968, ch. 244, § 1; Laws, 1971, ch. 346, § 1, eff from and after July 1, 1971.

RESEARCH REFERENCES

ALR. Liability for injury inflicted by horse, dog, or other domestic animal exhibited at show. 68 A.L.R.5th 599.

§ 69-5-113. Supervisors may appropriate money in aid of livestock shows.

The board of supervisors of any county in Mississippi is hereby authorized, in its discretion, to appropriate money out of the general fund of the county, not to exceed the sum of One Thousand Dollars ($1,000.00) annually, to aid in the payment of premiums and awards made and given by livestock shows located, held and operated in the livestock show district in which such county is embraced and included, as provided in Section 69-5-103, and to help defray the expenses of such livestock shows.

Any funds appropriated, as provided in the first paragraph hereof, may be paid over to the directors of such livestock show, or to the local committee in charge of such livestock show, as the board of supervisors may determine; and such funds shall be used in helping to pay for prizes or awards offered at such show and other expenses incurred in promoting and carrying out such livestock shows.

SOURCES: Codes, 1942, § 4907; Laws, 1940, ch. 210; Laws, 1979, ch. 335, § 2, eff from and after July 1, 1979.

§ 69-5-114. Certain livestock shows to be held at no charge for use of facilities [Repealed effective July 1, 2015].

In any livestock facility constructed, renovated or expanded with funds from the grant program authorized under Section 18 of Chapter 530, Laws of 1995, the members of the Future Farmers of America, the 4-H Club, the Junior Livestock Association and the United States Pony Club, Inc., may hold up to three (3) animal or livestock shows or sales per year per facility at no charge for use of the facility or for utilities. This section shall stand repealed on July 1, 2015.

SOURCES: Laws, 1999, ch. 321, § 1; Laws, 2011, ch. 354, § 1; Laws, 2012, ch. 423, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2011 amendment inserted "and the United States Pony Club, Inc." preceding "may hold up to three (3) animal or livestock shows," in the first sentence; and added last sentence.

The 2012 amendment extended the repealer provision from "July 1, 2012" to "July 1, 2015."

§ 69-5-115. Mississippi Delta Livestock Fair Association; creation; holding of livestock shows; prizes and awards.

In order to encourage and promote the raising of livestock in the State of Mississippi there is hereby created a body politic and corporate to be hereinafter known as "Mississippi Delta Livestock Fair Association," which said body politic and corporate shall be under the management and control of the commissioner of agriculture and commerce, director of extension service, and president of the Mississippi Livestock Association, hereinafter designated as directors, who shall serve without compensation.

The Mississippi Delta Livestock Fair Association shall each year, at a time to be fixed by the directors, and under the supervision and rules and regulations promulgated by said directors, hold a livestock show at Greenwood in Leflore county, for the counties of Bolivar, Carroll, Coahoma, Holmes, Humphreys, Issaquena, Leflore, Sharkey, Sunflower, Washington, Yazoo, Tallahatchie, and Montgomery, at which the owners of livestock within said counties may exhibit and compete for prizes or awards offered by the directors of the said Mississippi Delta Livestock Fair Association, or for prizes or awards offered by any person or corporation through said directors, upon complying with the rules and regulations governing such livestock show.

No owner of livestock who has competed for a prize at any of the district livestock shows provided for in Section 69-5-105, during the current year, shall be eligible to compete for a prize at the show herein provided for in that year; and likewise, no one who competed for a prize at the show herein provided for during the current year shall be eligible to compete for a prize at any of the said district livestock shows during the current year.

The directors are hereby authorized to accept and hold for use at the Mississippi Delta Livestock Fair Association any appropriations, donations, or other funds designated to or to be awarded as prizes or awards under regulations promulgated by the directors.

SOURCES: Codes, 1942, § 4906; Laws, 1942, ch. 260.

§ 69-5-117. Mississippi Delta Livestock Fair Association; appropriations by supervisors.

The board of supervisors of any of the counties composing the Mississippi Delta Livestock Fair Association, as provided by Section 69-5-115, is authorized and empowered within its discretion to appropriate not exceeding fifteen hundred dollars per annum out of the general funds of such counties or as hereinafter provided for the purpose of maintaining and supporting the said Mississippi Delta Livestock Fair Association, and to aid in payment of premiums and awards given by livestock shows held by said association in said livestock district, and to help defray the expenses of such livestock shows; and any funds appropriated for the purpose herein provided may be appropriated by the board direct for the purpose herein mentioned, or the board may pay such funds direct to the directors of said livestock fair association, and said funds shall be used exclusively for the purpose herein mentioned; and if said funds are paid to the directors of said livestock fair association, then said funds shall be used exclusively by the directors of the livestock fair association for the purpose of maintaining and supporting the livestock fair association, and to aid in the payment of premiums and awards given by livestock shows held by said association in said district; and in the event said funds are appropriated and paid over to the directors of said association, it shall be the duty of said directors to keep a strict account of how such funds are used for that association, and they are hereby required to render to the board an itemized statement annually of all expenditures made by it under this section.

SOURCES: Codes, 1942, § 4906-01; Laws, 1944, ch. 252, § 1.

§ 69-5-119. Mississippi Delta Livestock Fair Association; supervisors may levy tax.

The board of supervisors of all counties in this state, composing the Mississippi Delta Livestock Fair Association as provided in Section 69-5-115 is authorized and empowered, in its discretion to levy annually a special tax of not exceeding one-fourth of a mill on the dollar, on all of the taxable property of the county, for the purpose of deriving sufficient funds for the purpose of maintaining and supporting the Mississippi Delta Livestock Fair Association, and to aid in the payment of premiums and awards given by livestock shows conducted by said association in said district, and to help defray the expenses of such livestock shows of said district. All revenue derived from such tax levy, shall be covered in a special fund of the county to be known as, "Mississippi Delta Livestock Fair Association Fund," and shall be used exclusively for the purpose herein mentioned. However, the levy made under the terms of this section shall not be considered in making disbursements under Sections 27-33-1 through 27-33-65, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 4906-02; Laws, 1944, ch. 252, § 2.

§ 69-5-121. Bulls for breeding; maintenance by certain counties; defrayal of expenses.

(1) For the purpose of promoting, fostering and encouraging the upgrading and improving of livestock, any county with an assessed valuation of Fifteen Million Dollars ($15,000,000.00) or more, and designated as a place for the holding of a livestock show, by the provisions of Section 69-5-103, may upon the order of the board of supervisors purchase, keep, maintain or sell bulls for breeding purposes, but not more than five (5) such bulls may be owned by any such county at any one (1) time.

(2) The board of supervisors shall employ a proper and suitable person qualified by training and experience to aid, advise and assist livestock growers in the development of pastures, upgrading of livestock, or in any way helpful to encourage and promote the raising of livestock and who shall handle, care for, look after and be responsible for the bulls so bought, and such employee shall be charged with the duty of carrying out the provisions of this section in accordance herewith, and shall be paid such salary and expense as the board of supervisors may order, all of said sums to be paid out of the general funds of the county.

(3) Such bulls shall be placed at convenient locations over the county under suitable maintenance contracts for their care and upkeep, and shall be available at all reasonable times to farmers and stock growers upon the payment of a nominal charge for the purpose solely of assisting in defraying the expense of such care and upkeep, the amount of such fees governed solely by such maintenance costs, and to be fixed at the discretion of the board of supervisors.

(4) The board of supervisors shall make such rules and regulations for the services of said bulls as shall be for the best interests of the farmers and stock growers.

(5) The board of supervisors may set aside, appropriate and expend moneys from the general fund to pay the cost of employing such person and all expenses incidental to his employment and for the purchase of bulls for breeding purposes and to provide for the care and maintenance of such bulls and for defraying any and all expense necessary to carry out the intent of this section.

SOURCES: Codes, 1942, § 4907-01; Laws, 1944, ch. 248, §§ 1-5; Laws, 1986, ch. 400, § 47, eff from and after October 1, 1986.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 67 et seq.

CHAPTER 7

Markets and Marketing; Domestic Fish Farming

Article 1. State Marketing Commission. [Repealed]
Article 3. Mississippi Central Market Board 69-7-101
Article 5. Poultry and Poultry Products 69-7-201
Article 6. Egg Marketing Board 69-7-251
Article 7. Egg Marketing 69-7-301
Article 9. Vegetable Marketing 69-7-401
Article 11. Domestic Fish Farming 69-7-501
Article 13. Catfish Marketing 69-17-601
Article 15. Mississippi Catfish Processor Fair Practices Act 69-7-651
Article 17. Weighing Devices for Farm-Raised Catfish 69-7-701
Article 19. Grading and Certification of Fruits and Nuts 69-7-751

ARTICLE 1.

STATE MARKETING COMMISSION
[REPEALED].

§§ 69-7-1 through 69-7-29. Repealed.

Repealed by Laws of 1981, ch. 325, § 1, effective from and after July 1, 1981.

§ 69-7-1. [Codes, 1942, § 4434-05; Laws, 1944, ch. 249, § 5; Laws, 1946, ch. 227, § 2]

§ 69-7-3. [Codes, 1942, § 4435-14; Laws, 1944, ch. 249, § 14]

§ 69-7-5. [Codes, 1942, § 4435-01; Laws, 1944, ch. 249, § 1]

§ 69-7-7. [Codes, 1942, § 4435-02; Laws, 1944, ch. 249, § 2; Laws, 1946, ch. 227, § 1]

§ 69-7-9. [Codes, 1942, § 4435-11; Laws, 1944, ch. 249, § 11]

§ 69-7-11. [Codes, 1942, § 4435-03; Laws, 1944, ch. 249, § 3]

§ 69-7-13. [Codes, 1942, § 4435-12; Laws, 1944, ch. 249, § 12]

§ 69-7-15. [Codes, 1942, § 4435-09; Laws, 1944, ch. 249, § 9]

§ 69-7-17. [Codes, 1942, § 4435-04; Laws, 1944, ch. 249, § 4]

§ 69-7-19. [Codes, 1942, § 4435-06; Laws, 1944, ch. 249, § 6; Laws, 1946, ch. 227, § 3]

§ 69-7-21. [Codes, 1942, § 4435-07; Laws, 1944, ch. 249, § 7]

§ 69-7-23. [Codes, 1942, § 4435-08; Laws, 1944, ch. 249, § 8; Laws, 1946, ch. 227, § 4]

§ 69-7-25. [Codes, 1942, § 4435-08.5; Laws, 1950, ch. 307, §§ 1-4]

§ 69-7-27. [Codes, 1942, § 4435-13; Laws, 1944, ch. 249, § 13]

§ 69-7-29. [Codes, 1942, § 4435-10; Laws, 1944, ch. 249, § 10]

Editor's Note — Former § 69-7-1 defined agricultural products.

Former § 69-7-3 provided that §§ 69-7-1 through 69-7-29 were cumulative and supplemental to other existing laws.

Former § 69-7-5 created the state marketing commission.

Former § 69-7-7 provided for appointment of members and their term of office on the state marketing commission.

Former § 69-7-9 provided for payment of expenses and compensation for members of the state marketing commission.

Former § 69-7-11 related to the headquarters and meeting place of the state marketing commission.

Former § 69-7-13 pertained to meetings of the state marketing commission.

Former § 69-7-15 related to records and reports of the state marketing commission.

Former § 69-7-17 contained provisions as to the duties and powers of the state marketing commission.

Former § 69-7-19 related to applications for grant of aid to agricultural and co-operative associations.

Former § 69-7-21 related to a survey of need required by former § 69-7-19.

Former § 69-7-23 contained provisions for grant of aid.

Former § 69-7-25 authorized additional grants of aid.

Former § 69-7-27 related to appointment of inspectors to assist the state commissioner of agriculture and commerce in carrying out the provisions of former Article 1.

Former § 69-7-29 established a state marketing commission fund.

ARTICLE 3.

MISSISSIPPI CENTRAL MARKET BOARD.

SEC.
69-7-101. Central Market Board created.
69-7-103. Members; appointment and term of office.
69-7-105. Meetings of the board; compensation of members.
69-7-107. Headquarters; organization.
69-7-109. Powers and duties of the board.
69-7-111. State market manager; bond, duties, compensation.
69-7-113. State market manager to keep records and make reports.
69-7-115. Acquisition of facilities, equipment, etc.
69-7-117. Management and disposition of property.
69-7-119. Limitation on powers of board.
69-7-121. Central market fund.

§ 69-7-101. Central Market Board created.

For the purpose of aiding, establishing and providing proper facilities for the efficient handling of farm and other food products in the interest of farmer, consumer, the general public and the State of Mississippi, and to assist in the disposal and sale of such products, there is hereby created a Mississippi Central Market Board, hereinafter referred to as the "board."

SOURCES: Codes, 1942, § 4435-31; Laws, 1946, ch. 177, § 1.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Markets and Marketing §§ 33 et seq.

§ 69-7-103. Members; appointment and term of office.

The board shall consist of the State Commissioner of Agriculture and Commerce, who shall be a member and ex officio chairman thereof, and four other members to be appointed by the Governor, one of whom shall be from each highway commissioner's district and the fourth member from the state at large, all of whom shall be qualified electors of the State of Mississippi, one of whom shall be a wholesale groceryman dealing in fruits and vegetables, one a retail groceryman dealing in fruits and vegetables, one a farmer growing fruits and/or vegetables, and one a farmer producing poultry and eggs. In making the first appointments, the term of office of the farmer producing poultry and eggs shall be appointed for one year, the retail groceryman dealing in fruits and vegetables shall be appointed for two years, the farmer growing fruits and/or vegetables shall be appointed for three years, and the wholesale groceryman dealing in fruits and vegetables shall be for four years, and each of the successors shall thereafter be appointed for a term of four years. Vacancies on the board shall be filled by the Governor for the unexpired term.

SOURCES: Codes, 1942, § 4435-32; Laws, 1946, ch. 177, § 2.

§ 69-7-105. Meetings of the board; compensation of members.

The board shall meet at least once each quarter during the fiscal year and at such other times and places as it may adopt by rule or regulation, and may be called in special session upon notice mailed by the secretary not less than seven (7) days prior to the date of the meeting, but this requirement as to notice may be waived by consent of all members of the board. Three members of the board shall constitute a quorum for the transaction of business, and each member attending any meeting shall receive a per diem as is provided by Section 25-3-69, Mississippi Code of 1972, for each day, or part of a day, for each meeting, and actual expenses incurred attending meetings, except the commissioner of agriculture and commerce who shall receive no compensation for attending meetings.

No member of the board shall draw in salary and expenses a sum in excess of Seven Hundred Fifty Dollars ($750.00) in any fiscal year.

SOURCES: Codes, 1942, § 4435-36; Laws, 1946, ch. 177. § 6; Laws, 1972, ch. 360, § 1; Laws, 1981, ch. 399, § 1, eff from and after July 1, 1981.

§ 69-7-107. Headquarters; organization.

The board shall be domiciled at or near Jackson, Mississippi, and shall hold its first meeting in the office of the State Commissioner of Agriculture and Commerce, within ten days after the members have qualified for office by taking the oath of office as required by the constitution and filing the same in the office of the Secretary of State, for the purpose of organizing the board and adopting such rules and regulations for the future activities hereunder as may be necessary and proper to carry out the terms and provisions of this article.

SOURCES: Codes, 1942, § 4435-33; Laws, 1946, ch. 177, § 3.

§ 69-7-109. Powers and duties of the board.

The board shall have the power to:

(a) Fix salaries of any authorized employees of the market;

(b) Fix rentals and charges for each type of facility constructed in the market, taking into consideration the cost of such facility, the interest and amortization period required, a proper relationship between types of operators in the market, cost of operation, and the need for reasonable reserves, expansion and the like;

(c) Make investigations and hold hearings and conferences necessary to formulate and adopt a financial building and operating program for a market and make revisions from time to time;

(d) Make rules and regulations which shall govern all such business and all persons and vehicles coming upon the market;

(e) Provide and enforce penalties and liquidated damages relative to breaches of such rules and regulations and any contracts entered into;

(f) Lease the buildings and facilities to farmers, wholesale dealers and other persons engaged in the wholesale marketing of perishable farm products;

(g) Determine and set the hours when the market may open and close during any day or night throughout the year;

(h) Plan, build, construct or cause to be built or constructed, or lease any facilities, on the grounds under the control of the Mississippi Central Market Board, that are deemed necessary for the successful operation of a wholesale market for farm products;

(i) Rent or lease any necessary property, real or personal, on the grounds under the control of the Mississippi Central Market Board, as may be deemed advisable by the board for the successful operation of the market. However, that before leasing or renting any property for use as a filling station or the sale of similar supplies and accessories, the board shall advertise and receive sealed bids therefor, and shall have the power to reject any and all of such bids, or to accept the highest and best bid made therefor, and the lessee shall erect such buildings and add such facilities as necessary to carry out the provisions of this article at the expense of the lessee in addition to any other monies paid as lease money to said board for the purpose of operating a service station. Such establishment shall not be tax exempt. No filling station shall be leased for a monthly rental less than One Cent (1¢) per gallon for each gallon of gasoline sold.

(j) Employ an attorney as prescribed in Section 69-1-14.

The said board shall also have full power and authority to rent or lease real property, on the grounds under the control of the Mississippi Central Market Board, not otherwise used, for a period not to exceed twenty-five (25) years to private concerns for the purpose of processing agricultural products, and providing such facilities found necessary by the board to carry out the purposes of this article, and such facilities, structures, buildings, or other improvements erected or placed thereon by private concerns shall be subject to taxation the same as private property, provided, however, that improvements or facilities erected thereon for processing agricultural products shall not be assessed or taxed until five (5) years after completion of construction. The improvements and facilities erected on said leased property shall be liable for ad valorem taxes and shall be assessed and levied against said leasehold separately from the fee of said lands, and upon failure to pay taxes upon same when due, said facilities and improvements shall be sold by the tax collector as other property is sold for the nonpayment of taxes, but only such rights of the lessee under said lease contract shall be so sold. Upon the failure to pay taxes promptly when due on said lease, said board shall have the power to cancel and terminate said lease immediately and shall thereupon be authorized to lease or re-lease same to another private individual or concern as herein provided.

The provisions hereof regarding taxation shall not apply to those buildings, structures and facilities erected on said property by the board.

The central market board shall maintain or operate local market, after the local board or members of any local market have voted to transfer its activity to the state market board. However, such local market shall be in the sale of produce or farm products, and the central market board shall not be required to assume any outstanding indebtedness in connection with the acquisition of such local market facilities.

SOURCES: Codes, 1942, § 4435-37; Laws, 1946, ch. 177, § 7; Laws, 1948, ch. 190, §§ 1, 2; Laws, 1954, ch. 152; Laws, 1983, ch. 365, § 4, eff from and after July 1, 1983.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Markets and Marketing §§ 22, 36 et seq.

§ 69-7-111. State market manager; bond, duties, compensation.

The board is authorized to select an executive officer to be known as the state market manager, who shall have the ability to operate a large business and who shall have a knowledge of the problems of the growers and distributors and have had experience in the marketing of perishable vegetables. It shall be the duty of the state market manager to manage and control such market as may be established hereunder, subject to the supervision of the board, and to employ, subject to the approval of the board, such employees as may be necessary for the efficient and economical operation and maintenance of such market. The state market manager shall receive such salary as may be fixed by the Legislature, and shall devote his entire time and attention to the discharge of his duties as such manager. He shall attend all meetings of the board and be the secretary thereof and keep the minutes thereof, and shall have custody of its books, records, papers and accounts. The state market manager shall, before assuming the duties of his office, enter into a bond in the sum of Ten Thousand Dollars ($10,000.00) payable to the State of Mississippi conditioned upon the faithful performance of his or her duties.

SOURCES: Codes, 1942, § 4435-34; Laws, 1946, ch. 177, § 4; Laws, 1966, ch. 445, § 7, eff from and after July 1, 1966.

§ 69-7-113. State market manager to keep records and make reports.

The market manager shall keep, or have kept, records of all leases, rentals, sales, and expense items which shall be audited as other state records are audited. And he shall make, or cause to be made, a report of receipts and disbursements and other information pertaining to the operations of the market to each regular session of the Legislature.

SOURCES: Codes, 1942, § 4435-40; Laws, 1946, ch. 177, § 10.

§ 69-7-115. Acquisition of facilities, equipment, etc.

The board is hereby authorized subject to the approval of the building commission to acquire by purchase, donation, lease or condemnation, and for and in the name of the State of Mississippi, a suitable site or sites, accessible to highways and railroads and air terminal facilities, and to erect and install thereon such structures, facilities, and equipment as may be necessary for the inspection, grading, standardization, classification, refrigeration, processing and marketing of such products (for both food and feed), within the amount appropriated for such purposes by the Legislature and subject to the approval of the building commission.

SOURCES: Codes, 1942, § 4435-35; Laws, 1946, ch. 177, § 5.

Editor's Note — Section 31-11-1 provides that the term "State Building Commission" or "Building Commission" wherever it appears in the laws of Mississippi shall be construed to mean the Governor's Office of General Services.

Cross References — Powers and duties of Dept. of Finance and Administration, see § 31-11-3.

§ 69-7-117. Management and disposition of property.

(1) The Mississippi Central Market Board is authorized and empowered to assume jurisdiction of, and to administer any properties that may be acquired by the State of Mississippi for the use and benefit of said Mississippi Central Market Board, located at Prairie, Monroe County, Mississippi, and to administer the affairs of said properties in accordance with the authority conferred on said Mississippi Central Market Board by this article.

(2) The Mississippi Central Market Board is hereby authorized and empowered to lease, or rent, to any corporation, individual, partnership, municipality, county or political subdivision thereof, any part of the property

under their jurisdiction, or which may hereafter come under their jurisdiction, located at Prairie, Monroe County, Mississippi, that cannot be used for the purposes as set forth in this article.

(3) The funds derived from any lease, or rental contract entered into under authority of this section shall be placed in the state treasury to the credit of the general fund of the state.

(4) The Mississippi Central Market Board shall not enter into any lease, or rental contract under authority of this section, until such lease, or rental contract has first been approved by the Agricultural and Industrial Board, and their approval of same entered upon their minutes.

SOURCES: Codes, 1942, § 4435-35.5; Laws, 1950, ch. 196, §§ 1-4.

Editor's Note — Section 57-1-2 provides that the words "Agricultural and Industrial Board" shall mean the "Department of Economic and Community Development".

Section 57-1-54 provides that the Mississippi Development Authority shall be the Department of Economic and Community Development, and that whenever the term "Mississippi Department of Economic and Community Development," "Mississippi Department of Economic Development," or any variation thereof, appears in any law the same shall mean the Mississippi Development Authority.

§ 69-7-119. Limitation on powers of board.

The board shall not have the power to:

(a) acquire, construct, maintain or operate any market or facility which is not operated primarily for the purpose of purchasing and selling at wholesale;

(b) engage in the purchase or sale of farm produce, except the leasing as a grower or produce dealer of a stall or store upon the market and such transactions as are ordinarily incidental thereto and at the same rental as like businesses pay.

SOURCES: Codes, 1942, § 4435-38; Laws, 1946, ch. 177, § 8.

§ 69-7-121. Central market fund.

All funds collected under this article shall be deposited in the State Treasury to the credit of Central Market Fund and shall be used solely for payment of the expenses of operation and maintenance of such market and facilities including the acquisition, leasing, maintenance and operation of local farm market facilities located at other points in the State of Mississippi as provided for herein, and for the employment of such production and marketing personnel as will, in the discretion of the Central Market Board, more effectively promote the operation of such market, on warrants issued according to law pursuant to payment vouchers signed by the chairman or his designee.

SOURCES: Codes, 1942, § 4435-39; Laws, 1946, ch. 177, § 9; Laws, 1954, ch. 152, § 2; Laws, 1985, ch. 342; Laws, 1991, ch. 312, § 1, eff from and after July 1, 1991.

ARTICLE 5.

POULTRY AND POULTRY PRODUCTS.

SEC.
69-7-201. What constitutes "doing business"; resident agent; service of process.
69-7-203. License required; fees; renewals.
69-7-205. Issuance and renewal or refusal of license.
69-7-207. Application for license.
69-7-209. Appeal from refusal to grant license.
69-7-211. Injunctions.
69-7-213. Penalties.

§ 69-7-201. What constitutes "doing business"; resident agent; service of process.

For the purposes of this article, every person, firm, corporation, association or other legal entity who is engaged in hatching baby chicks and ratites, including baby ostrich, emu and rhea, for sale, distribution or under contract, either oral or written, for the production of ostrich, emu, rhea, broilers, laying hens, roosters or eggs, and every person, firm, partnership, corporation, association, or other legal entity, who procures the production of ostrich, emu, rhea, broilers, laying hens, roosters or eggs for sale, distribution or processing by contract with others, either oral or written, shall be considered "doing business" within the State of Mississippi, and every person, firm, corporation, association or other legal entity that is a nonresident of this state and who desires to "do business" within this state as covered by this article shall, as a condition precedent to obtaining a license hereunder, appoint or designate a resident of the State of Mississippi as agent for the service of process and shall file such appointment or designation with the Secretary of State. Thereafter, the service of summons upon the agent appointed or designated shall be sufficient to give the courts of this state jurisdiction of any cause of action arising under the terms of this article. Any person, firm, partnership, corporation, association or other legal entity who "does business" under the provisions of this article, whether under a license or otherwise, without appointing or designating an agent as herein required shall be deemed to have appointed the Secretary of State as such agent and may be proceeded against in courts of this state by service of process upon the Secretary of State.

SOURCES: Codes, 1942, § 4435-81; Laws, 1960, ch. 154, § 1; Laws, 1993, ch. 417, § 2; Laws, 1996, ch. 543, § 5, eff from and after July 1, 1996.

Cross References — Duties of Secretary of State, generally, see § 7-3-5.

Service of process upon agents of firms or corporations, generally, see § 13-3-41.

For the rule governing the service of process upon persons listed in this statute, see Miss. R. of Civ. P. 4.

§ 69-7-203. License required; fees; renewals.

Every person, firm, partnership, association, corporation, or other legal entity in this state, engaged in the business of operating an incubator, or incubators, for hatching baby chicks and ratites, including baby ostrich, emu and rhea, for sale, distribution or under contract, either oral or written, for the production of ostrich, emu, rhea, broilers, laying hens, roosters or eggs for sale, distribution or processing by contract with others, either oral or written, is required to obtain a license to engage in such business from the Commissioner of Agriculture and Commerce of the State of Mississippi. The Commissioner of Agriculture and Commerce shall charge a fee of Five Dollars ($5.00) for such license and a like fee of Five Dollars ($5.00) for the renewal thereof, which license must be renewed annually on or before July 1 of each succeeding year. The fees charged for the license shall be paid by the commissioner to the State Treasurer, who shall deposit the same in the General Fund in the State Treasury. Strict accounting of all fees charged hereunder shall be made by the commissioner.

Nothing in this article shall be construed to require any person, firm, partnership, corporation, association, or other legal entity, who may be engaged in the businesses covered by this article wholly for themselves, or any person, firm, partnership, corporation, association, or other legal entity, who purchases his own flocks and becomes wholly responsible for the growing and feeding thereof, to obtain a license hereunder.

SOURCES: Codes, 1942, § 4435-82; Laws, 1960, ch. 154, § 2; Laws, 1970, ch. 255, § 3; Laws, 1993, ch. 417, § 3; Laws, 1996, ch. 543, § 6, eff from and after July 1, 1996.

Cross References — Duties of Commissioner of Agriculture, generally, see § 69-1-13.

ATTORNEY GENERAL OPINIONS

Based upon a factual situation presented regarding a typical grower/processor contract, a processor engaged in a grower/processor contract for the production of broilers or laying hens is required to obtain a license from the Department of Agriculture and Commerce as set forth in the statute. Spell, Jr., May 8, 2000, A.G. Op. #2000-0210.

A processor raising broilers or laying hens on his own land, paying all the costs of raising the birds, and employing a grower by way of a salary (thus making the grower an employee of the processor) is not required to be licensed with the Department of Agriculture and Commerce under the statute. Spell, Jr., May 8, 2000, A.G. Op. #2000-0210.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 69-7-205. Issuance and renewal or refusal of license.

The commissioner of agriculture and commerce is hereby authorized, empowered and directed to promulgate proper rules and regulations for the issuance of the license and for the renewal thereof, and for the preparation of the proper forms to be used, and the commissioner shall, to the best of his ability, inquire into the financial responsibility of every applicant for license and shall diligently endeavor to determine such applicants' business reputation. Should the investigation made by the commissioner indicate insolvency of the applicant and such applicant is unable to establish the proof of his financial responsibility by furnishing proper credit references and financial statements, he may furnish to the commissioner copies of any contracts he may have with other allied and related businesses that would justify the commissioner in issuing the license. Otherwise, the commissioner shall not issue the license to any person who cannot reasonably establish his financial responsibility to carry out any contract he may propose to enter into.

SOURCES: Codes, 1942, § 4435-83; Laws, 1960, ch. 154, § 3, eff from and after passage (approved May 10, 1960).

§ 69-7-207. Application for license.

The Commissioner of Agriculture and Commerce shall prescribe and furnish the necessary and proper forms for an application for a license required by Section 69-7-203, and such application form must be signed by the applicant, under oath, as to the correctness of the information furnished therein. Any applicant who shall knowingly furnish any false or fraudulent information for the purpose of obtaining a license hereunder, when such application has been duly and properly signed under oath, shall be guilty of perjury and subject to the penalties therefor.

SOURCES: Codes, 1942, § 4435-84; Laws, 1960, ch. 154, § 4, eff from and after passage (approved May 10, 1960).

§ 69-7-209. Appeal from refusal to grant license.

Any person feeling aggrieved with the decision of the commissioner of agriculture and commerce in refusing to grant a license hereunder shall have recourse by an appeal to the chancery court of Hinds County, Mississippi, by petition filed within thirty days from the date of final refusal to issue such license. The chancery court of Hinds County shall have and it is hereby given full jurisdiction of such appeal and it may enter any appropriate orders therein in term time or in vacation.

SOURCES: Codes, 1942, § 4435-83; Laws, 1960, ch. 154, § 3, eff from and after passage (approved May 10, 1960).

Cross References — Jurisdiction of chancery court, generally, see § 9-5-81.

§ 69-7-211. Injunctions.

Should any person continue to operate such business without having complied with the provisions of this article, the commissioner of agriculture and commerce is authorized to file petition for an injunction in the chancery court of the district where the violator may reside, or in the district where the violation occurred. The chancery court shall have and it is hereby given full jurisdiction to hear and determine the petition and enter any and all appropriate orders in term time and in vacation.

SOURCES: Codes, 1942, § 4435-85; Laws, 1960, ch. 154, § 5, eff from and after passage (approved May 10, 1960).

Cross References — Jurisdiction of chancery court, generally, see § 9-5-81.
Application for license, see § 69-7-207.

§ 69-7-213. Penalties.

Any person who continues the operation of any of the businesses for which a license is required under the provisions of this article, without having complied with the provisions hereof, shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed Five Hundred Dollars ($500.00).

SOURCES: Codes, 1942, § 4435-85; Laws, 1960, ch. 154, § 5, eff from and after passage (approved May 10, 1960).

Cross References — Jurisdiction of chancery court, generally, see § 9-5-81.
Application for license, see § 69-7-207.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 6.

EGG MARKETING BOARD.

SEC.
69-7-251. Definitions.
69-7-253. Board continued; membership; terms; vacancies.
69-7-255. Quorum; oath; compensation; board a body corporate; powers.
69-7-257. Administration of article; rules and regulations.
69-7-259. General powers and duties of board.
69-7-261. Commodity advertising, publicity, consumer information and sales promotion.
69-7-263. Assessment on eggs; costs of inspections; utilization of proceeds of assessment.
69-7-265. Records and reports of dealers and handlers.
69-7-267. Licenses.

69-7-269. Producers prohibited from distributing eggs on which assessment not paid; payment of assessment by dealer.
69-7-271. Civil penalties.
69-7-273. Criminal penalties.
69-7-275. Application.
69-7-277. Repealed.

Editor's Note — Laws, 1979, ch. 346, § 14, provided that Sections 69-7-251 through 69-7-275 would stand repealed from and after July 1, 1987. Subsequently, Laws, 1987, ch. 506, § 14, advanced the repeal date to July 1, 1991. Thereafter, Laws, 1991, ch. 331, § 14, amended Laws, 1987, ch. 506, § 14, deleting the provision for the repeal of Sections 69-7-251 through 69-7-275. However, Laws, 1991, ch. 331, § 15, added a new section, 69-7-277, which provided for the prospective repeal of Sections 69-7-251 through 69-7-275. Section 69-7-277 was itself subsequently repealed by Laws, 1996, ch. 475, § 14, eff from and after July 1, 1996.

§ 69-7-251. Definitions.

As used in this article, the terms defined in this section shall have the meanings herein given to them, except where the context expressly indicates otherwise:

(a) "Board" means the Mississippi Egg Marketing Board.

(b) "Person" means every person, partnership, firm, company, association, corporation or legal entity engaged in the production or sale of eggs in the state.

(c) "Eggs" means pullet and hen eggs only.

(d) "Handler" and "dealer" means any person engaged within the state as a wholesale distributor in the business of distributing eggs in Mississippi regardless of where the eggs are produced.

(e) "Producer" means any person engaged in the business of producing eggs in Mississippi, either as an owner or as an officer or stockholder of a business engaged in producing eggs in Mississippi, or any person deriving a profit from such a business.

(f) "Ship" or "shipping" means to move or cause to move eggs in intrastate or interstate or foreign commerce by rail, truck, boat, airplane or any other means.

(g) "Shipper" means any person engaged in shipping or causing to be shipped eggs in intrastate or interstate or foreign commerce, whether owner, agent or otherwise.

(h) "Case" means a standard case of thirty (30) dozen eggs.

SOURCES: Laws, 1973, ch. 427, § 1; Laws, 1976, ch. 374, § 1; Laws, 1979, ch. 346, § 1; Laws, 1981, ch. 308, §§ 1, 14; reenacted, Laws, 1983, ch. 314, § 1; reenacted, Laws, 1987, ch. 506, § 1; reenacted, Laws, 1991, ch. 331, § 1; reenacted without change, Laws, 1996, ch. 475, § 1, eff from and after July 1, 1996.

Cross References — Inapplicability of "producer" to person who performs services of caring for chickens and related services for contractor or employer, see § 69-7-275.

§ 69-7-253. Board continued; membership; terms; vacancies.

There is hereby continued the Mississippi Egg Marketing Board with domicile at the capital city of the state. The board shall be composed of five (5) members: one (1) member shall be the Commissioner of Agriculture and Commerce as ex officio member. One (1) member shall be an egg producer as defined in this article. Three (3) members shall be employed by or associated with egg industry related businesses, or disciplines which include poultry support, marketing, promotion, home economist, extension poultry science agencies and the Mississippi Department of Agriculture and Commerce. No more than one (1) industry-related business or discipline member shall be employed by, associated with or have a financial interest in the same company or subsidiary.

The Governor shall appoint the members from a list provided by the board based upon a poll of its members. The terms shall be for six (6) years. Each member shall serve, after the completion of his term, until his successor is appointed and duly qualified. Each vacancy shall be filled by appointment for the unexpired term.

The terms of office of persons appointed under the original act shall continue until the expiration of the terms to which they were appointed, the intent of this article being to continue the Mississippi Egg Marketing Board.

SOURCES: Laws, 1973, ch. 427, § 2; Laws, 1976, ch. 374, § 2; Laws, 1979, ch. 346, § 2; Laws, 1981, ch. 308, § 2; reenacted, Laws, 1983, ch. 314, § 2; reenacted and amended, Laws, 1987, ch. 506, § 2; reenacted, Laws, 1991, ch. 331, § 2; reenacted without change, Laws, 1996, ch. 475, § 2; Laws, 2000, ch. 422, § 1; Laws, 2008, ch. 357, § 1, eff from and after passage (approved Mar. 26, 2008.)

§ 69-7-255. Quorum; oath; compensation; board a body corporate; powers.

A majority of the members of the board shall constitute a quorum for the transaction of all business and the carrying out of the duties of the board. Each member shall subscribe to the oath of office prescribed for state officers. No member shall receive any salary, but each member shall receive per diem compensation as authorized in Section 25-3-69, and shall be reimbursed for expenses in the manner and amount specified in Section 25-3-41.

The Mississippi Egg Marketing Board shall be and is hereby declared and created a corporate body. The board shall have the power to contract and be contracted with, and shall have and possess all the powers of a body corporate for all purposes necessary for fully carrying out the provisions of this article. The board shall adopt a corporate seal by which it shall authenticate its proceedings. Copies of the proceedings, records and acts of the board and certificates purporting to relate the facts concerning such proceedings, records and acts signed by the chairman of the board and authenticated by said seal shall be prima facie evidence thereof in all the courts of the state.

SOURCES: Laws, 1973, ch. 427, § 3; Laws, 1976, ch. 374, § 3; Laws, 1979, ch. 346, § 3; Laws, 1981, ch. 308, § 3; reenacted and amended, Laws, 1983, ch. 314, § 3; reenacted, Laws, 1987, ch. 506, § 3; reenacted, Laws, 1991, ch. 331, § 3; reenacted without change, Laws, 1996, ch. 475, § 3, eff from and after July 1, 1996.

Cross References — Uniform per diem compensation of officers and employees of state boards, commissions and agencies, see § 25-3-69.

§ 69-7-257. Administration of article; rules and regulations.

Except for the collections of the proceeds of the assessment levied hereunder, which shall be collected by the Commissioner of Agriculture and Commerce, the administration of this article shall be vested in the Mississippi Egg Marketing Board. The board shall prescribe reasonable rules and regulations for the enforcement of the provisions of this article.

SOURCES: Laws, 1973, ch. 427, § 4; Laws, 1976, ch. 374, § 4; Laws, 1981, ch. 308, § 4; reenacted, Laws, 1983, ch. 314, § 4; reenacted, Laws, 1987, ch. 506, § 4; reenacted, Laws, 1991, ch. 331, § 4; reenacted without change, Laws, 1996, ch. 475, § 4, eff from and after July 1, 1996.

§ 69-7-259. General powers and duties of board.

The powers and duties of the board shall include, but be not limited to, the following:

(a) To elect a chairman and vice chairman and, from time to time, such other officers as it may deem advisable, and when necessary, to alter, rescind, modify or amend the rules and regulations necessary for the exercise of its powers and the performance of its duties. Such rules and regulations shall have the force and effect of law when not inconsistent therewith.

(b) Employ such personnel as it deems necessary to carry out the purposes of this article, and to fix and pay the salaries thereof, including technical and professional services on a fee basis when necessary.

(c) Make such advertising contracts and other agreements as it deems appropriate, including, particularly, cooperative agreements with other advertisers of similar allied products.

(d) Make cooperative agreements with the Mississippi Department of Agriculture and Commerce and the Research and Marketing Administration of the United States Department of Agriculture and other associations, public or private, for conducting consumer and producer and dealer information as to the food value of eggs, and also for instruction on grades and packs and how to evaluate their merits in order to expand the market for Mississippi produced eggs. The board may use as much of its funds as it deems necessary for matching moneys available from the Research and

Marketing Administration of the United States Department of Agriculture or of any agencies of the state or political subdivision thereof.

(e) Keep books, records and accounts of all its proceedings, which shall be open to inspection and audit by the State Auditor at all times.

(f) To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations necessary to carry out the purposes of this article.

(g) Investigate and cause to be prosecuted any violators of this article.

(h) Suspend, revoke or take other disciplinary action involving the licenses issued under the provisions of this article.

SOURCES: Laws, 1973, ch. 427, § 5; Laws, 1976, ch. 374, § 5; Laws, 1981, ch. 308, § 5; reenacted, Laws, 1983, ch. 314, § 5; reenacted, Laws, 1987, ch. 506, § 5; reenacted, Laws, 1991, ch. 331, § 5; reenacted without change, Laws, 1996, ch. 475, § 5, eff from and after July 1, 1996.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts, " "State Auditor, " and "Auditor " appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 69-7-261. Commodity advertising, publicity, consumer information and sales promotion.

The board shall plan and conduct campaigns for commodity advertising, publicity, consumer information and sales promotion to increase consumption of eggs and may contract for any advertising, publicity, consumer information and sales promotion services. To accomplish such purposes, the board shall have power and it shall be the duty of the board to disseminate information:

(a) Relating to eggs and the importance thereof in the diet of the people in preserving public health, economy thereof and the importance of eggs in the nutrition of children.

(b) On the various economic aspects relating to the business of producing and marketing eggs in Mississippi.

(c) To decide upon some distinctive and suggestive emblem for Mississippi produced eggs, and to promote the use of same in the advertisement of Mississippi eggs.

SOURCES: Laws, 1973, ch. 427, § 6; Laws, 1976, ch. 374, § 6; Laws, 1979, ch. 346, § 6; Laws, 1981, ch. 308, § 6; reenacted, Laws, 1983, ch. 314, § 6; reenacted, Laws, 1987, ch. 506, § 6; reenacted, Laws, 1991, ch. 331, § 6; reenacted without change, Laws, 1996, ch. 475, § 6, eff from and after July 1, 1996.

§ 69-7-263. Assessment on eggs; costs of inspections; utilization of proceeds of assessment.

There is hereby imposed and levied an assessment at a rate not to exceed Three Cents (3¢) per case on all eggs produced in Mississippi wherever distributed or marketed and on all eggs marketed in Mississippi wherever distributed or produced. The rate of assessment shall be determined by the board. At the time of the sale, the egg producer shall provide evidence that all assessments provided herein have been paid. However, if the first sale of the eggs is made to a dealer or distributor, the producer shall pay to the dealer or the distributor the amount of the assessment owed; whereupon the dealer or distributor to whom such payment is made shall remit the assessment to the Commissioner of Agriculture and Commerce in accordance with the rules and regulations established and promulgated by the board. The board or the commissioner shall have the power to cause any duly authorized agent or representative to enter upon the premises of any dealer or handler of eggs and examine, or cause to be examined by such agent, any books, papers and records which deal in any way with respect to the payment of the assessment or enforcement of the provisions of this article.

All costs incurred by the board or the commissioner in examining or causing the examination of such books, papers and records shall be taxed against the dealer or handler. Cost shall be assessed at the rate of One Hundred Dollars ($100.00) per day or fraction thereof for each agent conducting the examination. Travel expenses shall be assessed in the manner and amount specified in Section 25-3-41, and other expenses shall be assessed at actual cost. All costs taxed against a dealer or handler for the examination of books, papers and records shall be paid within fifteen (15) days from the date such notice of cost is mailed to the dealer or handler.

The proceeds of the assessment levied under this article shall be collected by the Commissioner of Agriculture and Commerce in such manner and method as shall be prescribed by him in accordance with the provisions of this article. The funds derived from the assessment shall be paid into the State Treasury on or before the fifteenth day of each month and shall be deposited in a special fund in the State Treasury, which shall be established by the State Treasurer to the credit of the Mississippi Egg Marketing Board, and such funds shall be used by the board solely for the administration of this article. All costs, expenses and obligations incurred by the board for its operation and carrying out the purposes of this article shall be paid out of the special fund herein provided for after expenditures thereof shall have been authorized by the Legislature. Provided further, that the Mississippi Egg Marketing Board shall render to the Mississippi Legislature a detailed annual report of all collections and expenditures of the moneys collected under the provisions of this article. Any egg producer may request and receive a refund of the amount of assessment paid for the previous reporting period, provided he makes a written application with the Mississippi Egg Marketing Board within sixty (60) days from date of payment supported by bona fide copy of payment voucher and copy of canceled check. The application forms shall be prepared by the board and shall be available at the request of the producer. All such applications shall be processed and refunds paid within sixty (60) days after the funds have been received by the board.

SOURCES: Laws, 1973, ch. 427, § 7; Laws, 1976 ch. 374, § 7; Laws, 1979, ch. 346, § 7; Laws, 1981, ch. 308, § 7; reenacted, Laws, 1983, ch. 314, § 7; reenacted and amended, Laws, 1987, ch. 506, § 7; reenacted, Laws, 1991, ch. 331, § 7; reenacted without change, Laws, 1996, ch. 475, § 7, eff from and after July 1, 1996.

§ 69-7-265. Records and reports of dealers and handlers.

Every dealer or handler shall keep a complete and accurate record of all eggs handled by him. Such records shall be in such form and contain such other information as the board shall, by rule or regulation, prescribe. The records shall be preserved by said dealers or handlers for a period of one (1) year and shall be offered for inspection at any time upon oral or written demand by the board, the Commissioner of Agriculture and Commerce, or any duly authorized agent or representative of either.

Every dealer or handler, at such time or times as the board or the Commissioner of Agriculture and Commerce may require, shall submit reports or other documentary information deemed necessary for the efficient and equitable collection of the assessment imposed under this article.

SOURCES: Laws, 1973, ch. 427, § 8; Laws, 1976, ch. 374, § 8; Laws, 1979, ch. 346, § 8; Laws, 1981, ch. 308, § 8; reenacted, Laws, 1983, ch. 314, § 8; reenacted, Laws, 1987, ch. 506, § 8; reenacted, Laws, 1991, ch. 331, § 8; reenacted without change, Laws, 1996, ch. 475, § 8, eff from and after July 1, 1996.

§ 69-7-267. Licenses.

Every person owning over three thousand (3,000) hens, or who is engaged or who engages in the business of selling eggs to a retailer who retails eggs in the State of Mississippi shall prior to offering for sale or selling eggs to a retailer, secure a license for such business from the Commissioner of Agriculture and Commerce, which license shall first be approved by the board. Applications for licenses shall be on forms furnished by the Department of Agriculture and Commerce, and shall show the name and address of the applicant and such other information as to identity, kind and type of business engaged in as the commissioner shall deem pertinent. Each license application shall be accompanied by a fee of Fifty Dollars ($50.00). All licenses issued shall expire on June 30 each year. The license may be revoked or suspended by the board for violation of any provision of this article or rules and regulations duly promulgated by the board for the enforcement of this article, or for the violation of any laws of the State of Mississippi pertaining to producing, grading, classifying or marketing eggs in Mississippi or regulations of the State Department of Agriculture and Commerce duly promulgated for such purposes. For the first offense, the license may be suspended for a period of not more than thirty (30) days; for the second offense, the license may be suspended for not more than sixty (60) days; for the third offense, the license may be suspended for not more than one (1) year. For any subsequent offense, the license may be suspended for any period, or may be revoked. Such disciplinary action shall be the result of not less than board action. Any person against whom such disciplinary action has been taken may apply to the board for a hearing in order to show cause why the disciplinary action shall not be taken. Such petition for a hearing shall act as supersedeas of the disciplinary action until such time as the board shall give the applicant an opportunity for a hearing; provided, however, that if such hearing is granted and any continuation or delay is the result of the action of the applicant, the supersedeas shall not continue past the date set by the board for such hearing.

Application for reinstatement of a revoked license may be made upon expiration of the period of revocation or if permanently revoked, then after twelve (12) months from date of said revocation. Each reinstatement application shall be accompanied by a reinstatement fee of Fifty Dollars ($50.00). All licenses shall be valid until suspended or revoked as herein provided or until cancelled by the licensee. Licenses shall not be transferable. Proceeds from the license fees collected under this article shall be transmitted to the State Treasurer for credit to the special fund as provided for elsewhere in this article.

SOURCES: Laws, 1973, ch. 427, § 9; Laws, 1976, ch. 374, § 9; Laws, 1979, ch. 346, § 9; Laws, 1981, ch. 308, § 9; reenacted, Laws, 1983, ch. 314, § 9; reenacted and amended, Laws, 1987, ch. 506, § 9; reenacted, Laws, 1991, ch. 331, § 9; reenacted without change, Laws, 1996, ch. 475, § 9, eff from and after July 1, 1996.

§ 69-7-269. Producers prohibited from distributing eggs on which assessment not paid; payment of assessment by dealer.

No egg producer with over three thousand (3,000) hens nor any egg handler or dealer shall sell or offer for sale any lot of eggs produced, distributed or marketed in Mississippi upon which the assessment imposed herein has not been paid. The assessment imposed herein shall be paid at such time or times as is fixed by the board. In the event such assessment is paid by any dealer who is not a producer, the dealer may bill the producer of such eggs in the amount of the assessment paid by him.

SOURCES: Laws, 1973, ch. 427, § 10; Laws, 1976, ch. 374, § 10; Laws, 1979, ch. 346, § 10; Laws, 1981, ch. 308, § 10; reenacted, Laws, 1983, ch. 314, § 10; reenacted and amended, Laws, 1987, ch. 506, § 10; reenacted, Laws, 1991, ch. 331, § 10; reenacted without change, Laws, 1996, ch. 475, § 10, eff from and after July 1, 1996.

§ 69-7-271. Civil penalties.

Any dealer or handler who fails to file a report or to pay any assessment within the time required by the board shall forfeit to the commissioner a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) of such amount for each month of delay or fraction thereof after the first month after such report was required to be filed or such assessment became due. The commissioner, if satisfied that the delay was excusable, may remit all or any part of such penalty. The penalty shall be paid to the commissioner and shall be disposed of by him in the same manner as funds derived from the payment of the assessment imposed herein.

The commissioner shall collect the penalties levied herein, together with the delinquent assessment, by any or all of the following methods:

(a) By voluntary payment by the person liable;

(b) By legal proceedings instituted in a court of competent jurisdiction;

(c) By injunctive relief to enjoin any dealer or handler or other person owing such assessment and/or penalties from operating his business or engaging in business as a dealer or handler of eggs until the delinquent assessment and/or penalties are paid.

SOURCES: Laws, 1973, ch. 427, § 11; Laws, 1976, ch. 374, § 11; Laws, 1979, ch. 346, § 11; Laws, 1981, ch. 308, § 11; reenacted, Laws, 1983, ch. 314, § 11; reenacted, Laws, 1987, ch. 506, § 11; reenacted, Laws, 1991, ch. 331, § 11; reenacted without change, Laws, 1996, ch. 475, § 11, eff from and after July 1, 1996.

§ 69-7-273. Criminal penalties.

Any person required to pay the assessment provided for in this article who refuses to allow full inspection of the premises, or any books, records or other documents relating to the liability of such person for the assessment herein imposed, or who shall hinder or in any way delay or prevent such inspection, or who shall fail or refuse to properly and timely pay all costs incurred by the board or the commissioner in conducting such examinations, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00), or by imprisonment in the county jail not to exceed one (1) year, or both.

Whoever violates any other provision of this article or any rule or regulation of the board pursuant thereto shall be guilty of a misdemeanor. Upon conviction of a first offense, he shall be punished by a fine not to exceed One Hundred Dollars ($100.00); upon a second offense, a fine not to exceed Five Hundred Dollars ($500.00); and upon a third or subsequent offense, a fine not to exceed One Thousand Dollars ($1,000.00) or by imprisonment in the county jail not to exceed thirty (30) days, or both.

SOURCES: Laws, 1973, ch. 427, § 13; Laws, 1976, ch. 374, § 12; Laws, 1979, ch. 346, § 12; Laws, 1981, ch. 308, § 12; reenacted, Laws, 1983, ch. 314, § 12; reenacted and amended, Laws, 1987, ch. 506, § 12; reenacted Laws, 1991,

ch. 331, § 12; reenacted without change, Laws, 1996, ch. 475, § 12, eff from and after July 1, 1996.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-7-275. Application.

The provisions of this article shall not apply to any egg producer who has less than three thousand (3,000) laying hens, nor to any eggs produced and also used for hatching purposes, nor eggs produced or purchased for further processing by egg breaking plants.

For the purposes of this article, anyone not the owner of the chickens or eggs who performs the services of caring for the chickens, gathering the eggs and related services for a contractor or employer, and who does not otherwise engage in distribution or sale of such eggs, shall be excepted from the provisions of this article, shall not be considered as a "producer" as defined herein, and shall not be liable for any assessments provided herein.

SOURCES: Laws, 1973, ch. 427, § 12; Laws, 1976, ch. 374, § 13; Laws, 1979, ch. 346, § 13; Laws, 1981, ch. 308, § 13; reenacted, Laws, 1983, ch. 314, § 13; reenacted, Laws, 1987, ch. 506, § 13; reenacted, Laws, 1991, ch. 331, § 13; reenacted without change, Laws, 1996, ch. 475, § 13, eff from and after July 1, 1996.

§ 69-7-277. Repealed.

Repealed by Laws of 1996, ch. 475, § 14, eff from and after July 1, 1996. [En Laws, 1991, ch. 331, § 15, eff from and after July 1, 1991]

Editor's Note — Former § 69-7-277 was a repealer for §§ 69-7-251 through 69-7-275. See Editor's note at the beginning of the article.

ARTICLE 7.

EGG MARKETING.

SEC.
69-7-301 through 69-7-319. Repealed.
69-7-321. Producers selling own production exempt from article; exemptions under federal "Eggs Products Inspection Act".
69-7-323. Minimum requirements for eggs offered for sale.
69-7-325. Weight and size requirements of eggs.
69-7-327. Egg marketing containers to describe contents.
69-7-329. Marketing agents; maintenance of egg handling facilities.
69-7-331. Commissioner of Agriculture and Commerce and his agents authorized to enter premises where eggs are sold.
69-7-333. Commissioner of Agriculture and Commerce to enforce article.
69-7-335. Commissioner of Agriculture and Commerce to promulgate regulations.
69-7-337. Commissioner of Agriculture and Commerce may issue "stop sale order."
69-7-339. Penalties for violations.

§§ 69-7-301 through 69-7-319. Repealed.

Repealed by Laws of 1972, ch. 532, § 12, eff from and after July 1, 1972.
§ 69-7-301. [Codes, 1942, § 4435-30.19; Laws, 1966, ch. 223, § 9]
§ 69-7-303. [Codes, 1942, § 4435-30.11; Laws, 1966, ch. 233, § 1]
§ 69-7-305. [Codes, 1942, § 4435-30.12; Laws, 1966, ch. 223, § 2]
§ 69-7-307. [Codes, 1942, § 4435-30.13; Laws, 1966, ch. 223, § 3]
§ 69-7-309. [Codes, 1942, § 4435-30.14; Laws, 1966, ch. 223, § 4]
§ 69-7-311. [Codes, 1942, § 4435-30.16; Laws, 1966, ch. 223, § 6]
§ 69-7-313. [Codes, 1942, § 4435-30.17; Laws, 1966, ch. 223, § 7]
§ 69-7-315. [Codes, 1942, § 4435-30.18; Laws, 1966, ch. 223, § 8]
§ 69-7-317. [Codes, 1942, § 4435-30.15; Laws, 1966, ch. 223, § 5]
§ 69-7-319. [Codes, 1942, § 4435-30.20; Laws, 1966, ch. 223, § 10]

Editor's Note — Former § 69-7-301 exempted producers selling their own production from the provisions of this article. Comparable provisions now appear in § 69-7-321.

Former § 69-7-303 prescribed minimum requirements for eggs offered for sale. Comparable provisions now appear in § 69-7-323.

Former § 69-7-305 related to the weight and size requirements for eggs. Comparable provisions now appear in § 69-7-325.

Former § 69-7-307 required egg marketing containers to describe contents thereof. Comparable provisions now appear in § 69-7-327.

Former § 69-7-309 related to marketing agents, maintenance of egg handling facilities, and the effect of failure to keep facilities in proper working order. Comparable provisions now appear in § 69-7-329.

Former § 69-7-311 authorized the commissioner of agriculture and commerce and his agents to enter premises where eggs were stored. Comparable provisions now appear in § 69-7-331.

Former § 69-7-313 empowered the commissioner of agriculture and commerce to enforce provisions of former §§ 69-7-301 through 69-7-319. For current powers are to enforcement of provisions, see §§ 69-7-333.

Former § 69-7-315 authorized the commissioner of agriculture and commerce to issue regulations. Comparable provisions now appear in § 69-7-335.

Former § 69-7-317 authorized the commissioner of agriculture and commerce to issue "stop sale order". Comparable provisions now appear in § 69-7-337.

Former § 69-7-319 related to penalties for violating provisions of former §§ 69-7-301 through 69-7-317. For current provisions applicable to §§ 69-7-321 et seq., see § 69-7-339.

§ 69-7-321. Producers selling own production exempt from article; exemptions under federal "Eggs Products Inspection Act".

Producers selling eggs of their own production, when offered on their own premises, or selling less than six (6) dozen eggs per week, are exempt from the provisions of this article.

All eggs, egg products, egg handlers and egg producers which are exempt under the provisions of U. S. Public Law 91-597, commonly referred to as the "Egg Products Inspection Act", or the regulations pertaining thereto, shall likewise be exempt from the provisions of this article to the same extent that such eggs, egg products, egg handlers, and egg producers are exempt from said Public Law 91-597 and the regulations pertaining thereto.

The name and address of the producer, packer or distributor shall appear on the container.

SOURCES: Codes, 1942, § 4435-30.39; Laws, 1972, ch. 532, § 9, eff from and after July 1, 1972.

Federal Aspects — United States Public Law 91-597, referred to in this section, is codified generally at 21 USCS §§ 1031.

§ 69-7-323. Minimum requirements for eggs offered for sale.

No person, firm, organization or corporation shall sell, offer for sale, or advertise for sale shell eggs that do not meet the minimum requirements for U. S. Consumer Grade AA, Grade A, or Grade B. Any change in the U. S. standards of quality for individual eggs made by the U. S. Department of Agriculture not conforming to the above designated standards shall be adopted in lieu of the above designated standards.

SOURCES: Codes, 1942, § 4435-30.31; Laws, 1972, ch. 532, § 1, eff from and after July 1, 1972.

§ 69-7-325. Weight and size requirements of eggs.

The net weight and size requirements that are now or may hereafter be established by the U. S. Department of Agriculture for shell eggs shall apply to all eggs sold, offered for sale or advertised for sale by any person, firm, organization or corporation. The grade and size shall appear in all advertisements.

SOURCES: Codes, 1942, § 4435-30.32; Laws, 1972, ch. 532, § 2, eff from and after July 1, 1972.

§ 69-7-327. Egg marketing containers to describe contents.

Any container or subcontainer in which eggs are marketed to consumers shall bear on the outside portion of the container, but shall not be limited to, the following:

(a) The applicable consumer grade provided for in this article.

(b) The applicable size or weight class provided for in this article.

(c) The word "eggs."

(d) The numerical count of the contents.

(e) The name and address of the producer, packer or distributor.

(f) The date the eggs were graded applied legibly to the carton or on the tape used to seal the carton. Such date shall be expressed as the consecutive day of the year.

(g) The words "keep refrigerated" or words of similar meaning.

Words and numerals used to designate the grade and size shall be in clearly legible bold-faced type at least three-eighths (3/8) inch in height.

Any person intending to reuse a carton shall obscure any inappropriate labeling thereon and relabel the carton in accordance with this section prior to refilling the carton with eggs.

SOURCES: Codes, 1942, § 4435-30.33; Laws, 1972, ch. 532, § 3; Laws, 2000, ch. 371, § 1, eff from and after July 1, 2000.

§ 69-7-329. Marketing agents; maintenance of egg handling facilities.

Any person, business, cooperative, partnership, corporation or the like engaged in the marketing, processing, transporting, storing, displaying for sale or selling of eggs shall, in addition to maintaining all such egg handling facilities in a manner commensurate with laws governing food establishments, keep the eggs at an ambient temperature no greater than forty-five (45) degrees Fahrenheit.

SOURCES: Codes, 1942, § 4435-30.34; Laws, 1972, ch. 532, § 4; Laws, 2000, ch. 371, § 2, eff from and after July 1, 2000.

§ 69-7-331. Commissioner of Agriculture and Commerce and his agents authorized to enter premises where eggs are sold.

In carrying out the provisions of this article, the Commissioner of Agriculture and Commerce, his employees or agents are authorized to enter, on any business day, during the usual hours of business, any store, market or any other building or place where eggs are sold or offered for sale and to make such examination as is necessary to determine the quality and size of eggs sold or offered for sale.

SOURCES: Codes, 1942, § 4435-30.36; Laws, 1972, ch. 532, § 6, eff from and after July 1, 1972.

§ 69-7-333. Commissioner of Agriculture and Commerce to enforce article.

The powers of enforcement of this article shall be vested in the Commissioner of Agriculture and Commerce of the State of Mississippi.

SOURCES: Codes, 1942, § 4435-30.37; Laws, 1972, ch. 532, § 7, eff from and after July 1, 1972.

Cross References — Duties of commissioner of agriculture and commerce generally, see § 69-1-13.

§ 69-7-335. Commissioner of Agriculture and Commerce to promulgate regulations.

The Commissioner of Agriculture and Commerce of Mississippi is authorized to make and promulgate such regulations as may be necessary to carry out the provisions of this article.

SOURCES: Codes, 1942, § 4435-30.38; Laws, 1972, ch. 532, § 8, eff from and after July 1, 1972.

Cross References — Duties of commissioner of agriculture and commerce generally, see § 69-1-13.

§ 69-7-337. Commissioner of Agriculture and Commerce may issue "stop sale order."

If an authorized representative of the Commissioner of Agriculture and Commerce shall determine, after inspection, that any lot of eggs is in violation of this article, he may issue a "stop sale order" as to such lot or lots of eggs and forthwith notify the owner or custodian of such eggs. Such order shall specify the reason for its issuance. A stop sale order shall prohibit the further marketing of the eggs subject to it until such eggs are released by the Commissioner of Agriculture and Commerce or his duly authorized agent.

SOURCES: Codes, 1942, § 4435-30.35; Laws, 1972, ch. 532, § 5, eff from and after July 1, 1972.

§ 69-7-339. Penalties for violations.

Every person, firm, corporation or organization who by himself or itself, or by his or its agents or employees violates any of the provisions of this article, or the regulations made under this article for carrying out its provisions, or who fails or refuses to comply with any of the requirements of this article, or who willfully interferes with the Commissioner of Agriculture and Commerce, his employees or agents in the carrying out of his duties prescribed in this article, shall for each offense be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding Twenty-five Dollars ($25.00) nor less than Five Dollars ($5.00) for the first offense, not exceeding Fifty Dollars ($50.00) nor less than Twenty-five Dollars ($25.00) for the second, nor exceeding Two Hundred Dollars ($200.00) nor less than One Hundred Dollars ($100.00) for the third and all following offenses, and all costs for each and every offense.

SOURCES: Codes, 1942, § 4435-30.40; Laws, 1972, ch. 532, § 10, eff from and after July 1, 1972.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 9.

VEGETABLE MARKETING.

SEC.

69-7-401. Marketing committee and districts.

69-7-403. Additional districts and committee.

69-7-405. Regulation of marketing.

69-7-407. Commissioner of Agriculture and Commerce to enforce regulations.

69-7-409. Penalties.

§ 69-7-401. Marketing committee and districts.

A committee is hereby created to consist of seven members, four of whom shall be producers of vegetables and three of whom shall be handlers of vegetables, to be nominated and appointed as herein provided, from the following described districts:

(a) District No. 1 shall be composed of Beat No. 5 of Copiah County and all of Simpson County and shall be represented by two producers and one handler.

(b) District No. 2 shall be composed of Beats No. 1, No. 2 and No. 3 of Copiah County and all of the counties of Jefferson, Lincoln and Lawrence, and shall be represented by one producer and one handler.

(c) District No. 3 shall be composed of Beat No. 4 of Copiah County and all of the counties of Hinds, Rankin and Claiborne, and shall be represented by one producer and one handler.

On or before March fifteenth of each year, the committee then serving shall call meetings and select a committee as herein authorized, the members of which shall serve for a period of one year beginning April first of each year, or until their successors have been appointed. A vacancy from any cause shall be filled in the same manner. Members shall serve without compensation.

SOURCES: Codes, 1942, § 4526; Laws, 1940, ch. 312.

Cross References — Agricultural exemptions from sales tax, see § 27-65-103.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 21 et seq.

§ 69-7-403. Additional districts and committee.

A committee is hereby created to consist of nine members, six of whom shall be producers of fruits or vegetables and three of whom shall be handlers of fruits or vegetables, to be nominated and appointed as herein provided, from the following described districts:

(a) District No. 1 shall be composed of Lamar County and shall be represented by one producer.

(b) District No. 2 shall be composed of Stone County and shall be represented by one producer.

(c) District No. 3 shall be composed of Perry County and shall be represented by one producer.

(d) District No. 4 shall be composed of Jefferson Davis County and shall be represented by one producer.

(e) District No. 5 shall be composed of Covington County and shall be represented by one producer.

(f) District No. 6 shall be composed of a combination of all of the above named counties, and shall be represented by four handlers selected from the counties at large.

Committee members provided for in this section shall be chosen at meetings of growers or shippers held prior to March 15th of each year, such meetings to be called by the committee then serving. Members shall serve for a period of one year beginning April 1st, each year and shall serve without compensation. Any vacancy shall be filled in the same manner as the selection of a member.

SOURCES: Codes, 1942, § 4531; Laws, 1942, ch. 256.

§ 69-7-405. Regulation of marketing.

Whenever either the committee created by Section 69-7-401 or the committee created by Section 69-7-403 deems it advisable to regulate the marketing of fresh vegetables in any manner considered by them to be helpful to the industry during any specified period, it may so recommend in writing to the commissioner of agriculture and commerce. At the time of submitting such recommendations the committee shall furnish to the commissioner of agriculture and commerce all pertinent data and information upon which it acted in making such recommendations, along with such other data and information as the commissioner of agriculture and commerce may request.

Based upon the recommendation of the committee created for the districts under consideration and upon the information submitted in connection therewith, and upon other available data, the commissioner of agriculture and commerce may regulate the marketing of fresh vegetables produced in the area defined by this article, for any specified period, by regulating the handling of any vegetable produced in the districts defined in Section 69-7-401 or Section 69-7-403 in one or more of the following manners:

(a) By prohibiting unfair methods of competition and unfair trade practices in the purchase or sale thereof.

(b) By limiting the grade, size, and maturity of any vegetable which each handler may purchase from or handle on behalf of any and all producers thereof during any specified period or periods.

(c) Providing that any vegetable or any grade, size or quality thereof shall be purchased or sold or offered for sale by the handlers thereof only at prices filed by such handlers in the manner provided in such regulation.

(d) Providing for the regulating of the handling of any vegetable in the same manner and for the same period in effect under any federal marketing agreement.

(e) Specifying standard containers which may be used in the purchase or sale of any vegetables.

(f) Requiring that all containers used in the sale of any vegetable shall be plainly marked with the grade and size of the contents therein.

(g) With respect to the districts defined in Section 69-7-401, in order to provide proper maturity requiring that no vegetable may be sold prior to a date fixed in the regulation without permission from the commissioner of agriculture and commerce.

(h) With respect to the districts defined in Section 69-7-403, in order to provide proper maturity requiring that no vegetable may be sold prior to a date fixed in the regulation.

The commissioner of agriculture and commerce shall immediately make publication for the issuance of any such regulations.

SOURCES: Codes, 1942, §§ 4527, 4532; Laws, 1940, ch. 312; Laws, 1942, ch. 256.

Cross References — Duties of commissioner, generally, see § 69-1-13.

Authority of commissioner of agriculture to establish grades and standards of farm products, see § 69-1-19.

Agricultural districts, see § 69-7-403.

RESEARCH REFERENCES

ALR. Validity and construction of provision for liquidated damages in contract with co-operative marketing association. 12 A.L.R.2d 130.

Am Jur. 52 Am. Jur. 2d, Markets and Marketing §§ 33 et seq.

§ 69-7-407. Commissioner of Agriculture and Commerce to enforce regulations.

The Commissioner of Agriculture and Commerce shall have authority and police power to enforce any and all regulations issued pursuant thereto.

SOURCES: Codes, 1942, §§ 4528, 4533; Laws, 1940, ch. 312; Laws, 1942, ch. 256.

Cross References — Duties of commissioner, generally, see § 69-1-13.

§ 69-7-409. Penalties.

Every person, who by themselves, their agents or employees, violates any of the provisions of this article or any regulations issued under the provisions of this article shall for each offense be deemed guilty of a misdemeanor, and shall upon conviction thereof, be punished by a fine not exceeding $25.00, nor less than $5.00 or 30 days in jail for the first offense; not exceeding $50.00 nor less than $40.00 or 60 days in jail for the second offense; not exceeding $200.00

nor less than $100.00 or 90 days in jail or both for the third and all following offenses, and all costs for each and every offense.

SOURCES: Codes, 1942, §§ 4529, 4534; Laws, 1940, ch. 312; Laws, 1942, ch. 256.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 11.

DOMESTIC FISH FARMING.

SEC.
69-7-501. Definitions.
69-7-503. Construction of article.

§ 69-7-501. Definitions.

In recognition of the fact that domestic fish farming has become an important part of the agricultural economy of this state, the Legislature hereby determines and declares that whenever any of the statutes, laws, or regulations promulgated pursuant thereto, shall use any of the following terms, such terms so used and when used, shall be deemed and construed to include within the common or statutory definition thereof, the following:

(a) The term "agriculture" or "agricultural pursuit" or any similar term shall include the cultivation, growing, harvesting and/or marketing of domesticated fish.

(b) The term "cultivated crop" shall include domesticated fish which are grown, managed or harvested on an annual, semiannual, biennial or short interval basis.

(c) The term "livestock" shall include domesticated fish which are grown, managed, harvested and/or marketed as a cultivated crop.

(d) The term "domesticated fish" shall be understood to mean any fish that are spawned and grown, managed, harvested and marketed on an annual, semiannual, biennial or short term basis, in privately owned waters.

SOURCES: Codes, 1942, § 4435-91; Laws, 1964, ch. 235, §§ 1, 2, eff from and after passage (approved June 11, 1964).

Cross References — Tax on sales of aerators to domestic fish farmers, see § 27-65-17.

Cooperative aquatic products marketing associations, see §§ 79-21-1 et seq.

Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 69-7-503. Construction of article.

This article shall not be construed to permit the sale of any fish prohibited from being sold by law, but shall be supplementary thereto.

SOURCES: Codes, 1942, § 4435-91; Laws, 1964, ch. 235, §§ 1, 2, eff from and after passage (approved June 11, 1964).

ARTICLE 13.

CATFISH MARKETING.

SEC.
69-7-601. Short title.
69-7-602. Legislative findings.
69-7-603. Administration.
69-7-605. Definitions.
69-7-607. Labeling of catfish products; notice of country of origin; method of notification; record-keeping audit trail; commissioner authorized to inspect businesses for compliance; exceptions.
69-7-608. Misrepresentation in use of term "catfish"; regulation and inspection of retail and food service establishments; notice of violation; penalties.
69-7-609. Information as to origin of catfish products.
69-7-610. Identification by distributors, processors and wholesalers of catfish types upon request of commissioner; public disclosure of purchasers of catfish from distributors, processors and wholesalers.
69-7-611. Promulgation of rules and regulations.
69-7-612. Commissioner authorized to enter premises to take samples for testing to determine compliance.
69-7-613. Penalties; injunctive relief.
69-7-614. Repealed
69-7-615. Cooperation.
69-7-616. Administrative proceedings; sanctions; appeals; danger to public health.
69-7-617. Information concerning production and sales of catfish products.
69-7-619. Repealed.

§ 69-7-601. Short title.

This article shall be known as the "Mississippi Catfish Marketing Law of 1975."

SOURCES: Laws, 1975, ch. 308, § 1; reenacted without change, Laws, 2010, ch. 304, § 1, eff from and after passage (approved Feb. 17, 2010.)

Amendment Notes — The 2010 amendment reenacted the section without change.

Cross References — Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Requirement that catfish processors use certain weighing device for weighing farm-raised catfish, see § 69-7-701.

Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

§ 69-7-602. Legislative findings.

The Legislature finds that aquaculture sales and consumption have increased worldwide and that the use of antibiotics or chemicals not approved for use in food-producing animals in the United States is permitted in aquaculture in other countries and that consumers of aquaculture in Mississippi should be provided clear information as to where the aquaculture product originates from to protect the health and welfare of Mississippi consumers; and the Legislature also finds that food-misrepresentation or the passing off of less expensive aquaculture products as pricier aquaculture products to unknowing customers and retailers has become an issue in the marketplace and is a deceitful practice used on consumers and retailers alike and that consumers and retailers should be informed of the country and species of fish.

SOURCES: Laws, 2008, ch. 449, § 1; reenacted without change, Laws, 2010, ch. 304, § 2, eff from and after passage (approved Feb. 17, 2010.)

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 69-7-603. Administration.

This article shall be administered by the Commissioner of Agriculture and Commerce.

SOURCES: Laws, 1975, ch. 308, § 2, eff 180 days from and after passage (approved February 14, 1975); reenacted without change, Laws, 2010, ch. 304, § 3, eff from and after passage (approved Feb. 17, 2010.)

Editor's Note — This section was reenacted without change by ch. 304, § 3.
Amendment Notes — The 2010 amendment reenacted the section without change.

§ 69-7-605. Definitions.

For purposes of this article, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Capable of use as human food" means and shall apply to any catfish or part or product thereof unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or unless it is naturally inedible by humans.

(b) "Catfish" means any species within the family Ictaluridae.

(c) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi.

(d) "Direct retail sale" means the sale of catfish products individually or in small quantities directly to the consumer.

(e) "Distributor" means any person offering for sale, exchange or barter any catfish product destined for direct retail sale in the State of Mississippi.

(f) "Farm-raised Catfish" means the catfish product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture and includes fillets, steaks, nuggets and any other flesh from a "Farm-raised Catfish."

(g) "Fish" means species of fish similar to catfish in the families of Siluridae, Clariidae and Pangasiidae.

(h) "Food service establishment" means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge or other similar facility operated as an enterprise engaged in the business of selling food to the public.

(i) "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a catfish product is offered for direct retail sale.

(j) "Labeling" means all labels and other written, printed or graphic matter upon a catfish product, or any of its containers or wrappers, offered for direct retail sale.

(k) "Menu" means any listing of food and beverage options for a diner or customer to select from regardless of its form.

(*l*) "Pay pond" means a circumscribed body of water owned by a person and operated solely for recreational fishing purposes on a commercial basis for profit.

(m) "Person" includes any individual, partnership, corporation and association or other legal entity.

(n) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing or holding catfish products.

(o) "Producer" means any person engaged in the business of harvesting catfish, by any method, intended for direct retail sale.

(p) "Product" means any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof, except products which contain catfish only in small proportions or historically have not been, in the judgment of the commissioner, considered by consumers as products of the United States commercial catfish industry and which are exempted from definition as a catfish product by the commissioner under such conditions as he may prescribe to assure that the catfish or portions thereof contained therein are not adulterated and that such products are not represented as catfish products.

(q) "Product name" means the name of the catfish item intended for retail sale which identifies it as to kind, class or specific use.

(r) "Retailer" means any person offering for sale catfish products to individual consumers and representing the last sale prior to human consumption and includes food service establishments unless otherwise stated herein.

(s) "River or Lake Catfish" means the catfish product has been produced in a freshwater lake, river or stream but has not been produced according to the usual and customary techniques of commercial aquaculture.

(t) "Wholesaler" means any person offering for sale any catfish product destined for direct retail sale in the State of Mississippi.

SOURCES: Laws, 1975, ch. 308, § 3, eff 180 days from and after passage (approved February 14, 1975); Laws, 2002, ch. 506, § 1; Laws, 2004, ch. 377, § 1; Laws, 2008, ch. 449, § 2; reenacted without change, Laws, 2010, ch. 304, § 4, eff from and after passage (approved Feb. 17, 2010.)

Amendment Notes — The 2010 amendment reenacted the section without change.

Cross References — Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

§ 69-7-607. Labeling of catfish products; notice of country of origin; method of notification; record-keeping audit trail; commissioner authorized to inspect businesses for compliance; exceptions.

(1) Notice of country of origin.

(a) General requirements:

(i) All retailers of catfish products shall inform consumers, at the final point of sale of the catfish to the consumers, of the country of origin of the catfish;

(ii) United States country of origin. A retailer of catfish products may designate the catfish as having a United States country of origin only if:

1. In case of "Farm-raised Catfish," it is hatched, raised, harvested and processed in the United States;

2. In case of "River or Lake Catfish," it is:

a. Harvested in waters of the United States, a territory of the United States or a state, including the waters thereof; and

b. Processed in the United States, a territory of the United States or a state, including the waters thereof.

(iii) Farm-raised and River or Lake Catfish. The notice of country of origin for "Farm-raised Catfish" and "River or Lake Catfish" shall distinguish between "Farm-raised Catfish" and "River or Lake Catfish."

(b) Method of notification.

(i) Retailers.

1. The information required by paragraph (a) of subsection (1) of this section may be provided to consumers by means of a label, stamp, mark, placard or other clear and visible sign on the catfish or on the package, display, holding unit or bin containing the catfish at the final point of sale to consumers.

2. If the catfish is already individually labeled for retail sale regarding country of origin, the retailer shall not be required to provide any additional information to comply with this section.

(ii) Food service establishments. The information required by paragraph (a) of subsection (1) of this section shall be provided to the consumer on the menu of the food service establishment. For foreign or imported catfish, the information shall be adjacent to the item on the menu and printed in the same font style and size as the item. If the food service establishment offers for sale only catfish having a United States country of origin, then the food service establishment may generally disclose this in a prominent location in the food service establishment in lieu of disclosure on the menu. The signage disclosing the sale of catfish having a United States country of origin, that is to be placed in a prominent location in the food service establishment, shall be approved, as indicated by a stamp or seal, by the Mississippi Department of Agriculture and Commerce, which shall be held harmless in a cause of action for a retail or food service establishment's failure to disclose or fraudulent disclosure. Any liability arising from failure to disclose country of origin shall remain with the wholesaler and the retail or food service establishment.

(c) The commissioner may require that any person that prepares, stores, handles or distributes catfish for retail sale maintain a verifiable record-keeping audit trail that permits the commissioner to verify compliance with this law and any regulations promulgated hereunder.

(d) Any distributor or wholesaler engaged in the business of supplying catfish to a retailer or food service establishment shall provide information to the retailer or food service establishment indicating the country of origin of the catfish. The information shall include certification of origin through a state or federal agency that regulates the processing of catfish or through a federal agency that verifies that catfish and/or other products produced in countries other than the United States meets similar sanitation requirements.

(2) Any advertising as to any catfish product shall state the information required in paragraph (a) of subsection (1) of this section.

(3) The term "catfish" shall not be used as a common name or in the label name of fish product except as provided in this section.

(4) The commissioner shall have authority to enter the premises of any wholesaler, processor, distributor, retailer or any other person selling catfish products in order to determine compliance with this article.

(5) This section shall not apply to catfish products exported out of the United States.

SOURCES: Laws, 1975, ch. 308, § 4, eff 180 days from and after passage (approved February 14, 1975); Laws, 2002, ch. 506, § 2; Laws, 2004, ch. 377, § 2; Laws, 2008, ch. 449, § 3; reenacted without change, Laws, 2010, ch. 304, § 5, eff from and after passage (approved Feb. 17, 2010.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (1)(b)(ii), inserting the words "to disclose" after the word "failure" so that "food service establishment's failure or fraudulent disclosure" will read as "food service establishment's failure to disclose or fraudulent disclosure," in the next-to-last sentence. The Joint Committee ratified the correction at its August 5, 2008, meeting.

Amendment Notes — The 2010 amendment reenacted the section without change.

Cross References — Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 69-7-608. Misrepresentation in use of term "catfish"; regulation and inspection of retail and food service establishments; notice of violation; penalties.

(1) The term "catfish" shall not be used as a common name or used to advertise, distribute or label any fish or fish product except for those species within the definition of catfish in Section 69-7-605.

(2) It is unlawful to use the term "catfish" in the advertising, distributing, labeling or selling of any of those species within the family of Siluridae, Clariidae and Pangasiidae or any other fish not within the definition of catfish in Section 69-7-605.

(3)(a) The commissioner shall regulate and inspect retail and food service establishments under this article.

(b) The commissioner shall notify, in writing, any retailer or food service establishment violating this article and shall give the retailer or food service establishment three (3) days to correct the violation. No penalties under this article shall apply to any retailer or food service establishment that corrects the violation within three (3) days from the date notified by the commissioner.

(4) In addition to any other civil or criminal penalties, any person who violates any of the provisions of this chapter or who otherwise misrepresents as catfish any fish or fish product not defined as catfish under this article shall be punished by a fine of not more than One Thousand Dollars ($1,000.00). For a second offense, a person shall be punished by a fine of not more than Two Thousand Dollars ($2,000.00). For any subsequent violations, a person shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by having the license for the retail or food establishment suspended indefinitely or until such establishment has corrected the violation, or both. Any person against whom a complaint is made or who has been made subject to a fine or license suspension as provided by this subsection, may avail themselves of a due process administrative hearing as provided by Section 69-7-616.

SOURCES: Laws, 2002, ch. 506, § 3; Laws, 2008, ch. 449, § 4; reenacted without change, Laws, 2010, ch. 304, § 6, eff from and after passage (approved Feb. 17, 2010.)

Amendment Notes — The 2010 amendment reenacted the section without change.

Cross References — Notice requirements regarding country of origin of catfish and catfish products, see § 69-7-607.

§ 69-7-609. Information as to origin of catfish products.

All distributors, processors or wholesalers of catfish products, distributing or selling catfish products, shall provide information to each person, firm or corporation to whom they distribute or sell catfish products for resale as to the labeling information required in subsection (1) of Section 69-7-607.

SOURCES: Laws, 1975, ch. 308, § 5; Laws, 2004, ch. 377, § 3; Laws, 2008, ch. 449, § 5; reenacted without change, Laws, 2010, ch. 304, § 7, eff from and after passage (approved Feb. 17, 2010.)

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 69-7-610. Identification by distributors, processors and wholesalers of catfish types upon request of commissioner; public disclosure of purchasers of catfish from distributors, processors and wholesalers.

(1) All distributors, processors or wholesalers of catfish or other fish products, distributing or selling catfish or other fish products, shall provide

information to the commissioner or his representative, upon request, and to each retailer to which such distributor, processor or wholesaler distributes or sells catfish or other fish products as to whether such product is Farm-raised Catfish, River or Lake Catfish, Imported Catfish, or Other Fish a Product of (country of origin). In addition, any wholesaler or distributor shall provide his sales and purchases records of catfish and other fish upon request by the commissioner. Other fish includes those fish in the taxonomic family of Siluridae, Clariidae and Pangasiidae.

(2) The commissioner may disclose to the public the names and addresses of businesses that purchase domestic and/or foreign catfish and other fish from wholesalers, distributors and processors.

SOURCES: Laws, 2002, ch. 506, § 4; Laws, 2004, ch. 377, § 4; Laws, 2008, ch. 449, § 6; reenacted without change, Laws, 2010, ch. 304, § 8, eff from and after passage (approved Feb. 17, 2010.)

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 69-7-611. Promulgation of rules and regulations.

(1) The commissioner is authorized to promulgate such rules and regulations such as may be necessary for the efficient enforcement of this article.

(2) Before the issuance, amendment, or repeal of any rule or regulation authorized by this article, the commissioner shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the commissioner shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

SOURCES: Laws, 1975, ch. 308, § 6, eff 180 days from and after passage (approved February 14, 1975); reenacted without change, Laws, 2010, ch. 304, § 9, eff from and after passage (approved Feb. 17, 2010.)

Editor's Note — This section was reenacted without change by ch. 304, § 9.

Amendment Notes — The 2010 amendment reenacted the section without change.

Cross References — Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

§ 69-7-612. Commissioner authorized to enter premises to take samples for testing to determine compliance.

The commissioner shall have authority to enter the premises of any wholesaler, distributor or retailer to pull samples of catfish and other similar fish for laboratory testing to test for species identification and/or any other testing as may be necessary to determine compliance with this article.

SOURCES: Laws, 2008, ch. 449, § 7; reenacted without change, Laws, 2010, ch. 304, § 10, eff from and after passage (approved Feb. 17, 2010.)

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 69-7-613. Penalties; injunctive relief.

(1) Any person who violates any provision of this article for which no other penalty is provided by this article shall upon conviction be subject to a fine of not more than Five Hundred Dollars ($500.00).

(2) The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule or regulation promulgated under this article, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

SOURCES: Laws, 1975, ch. 308, § 7, eff 180 days from and after passage (approved February 14, 1975); Laws, 2002, ch. 506, § 5; reenacted without change, Laws, 2010, ch. 304, § 11, eff from and after passage (approved Feb. 17, 2010.)

Editor's Note — This section was reenacted without change by ch. 304, § 11.

Amendment Notes — The 2010 amendment reenacted the section without change.

Cross References — Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

RESEARCH REFERENCES

Am Jur. 8 Am. Jur. Pl & Pr Forms (Rev), Declaratory Judgments, Form 4.1 (complaint, petition, or declaration for judgment declaring statute or ordinance unconstitutional).

§ 69-7-614. Repealed.

Repealed by operation of law on July 1, 2004, by Laws, 2002, ch. 506, § 6.

[Laws, 2002, ch. 506, § 6, eff from and after passage (approved Apr. 1, 2002.]

Editor's Note — Former § 69-7-614 was entitled "Records required."

§ 69-7-615. Cooperation.

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this article.

SOURCES: Laws, 1975, ch. 308, § 8, eff 180 days from and after passage (approved February 14, 1975); reenacted without change, Laws, 2010, ch. 304, § 12, eff from and after passage (approved Feb. 17, 2010.)

Editor's Note — This section was reenacted without change by ch. 304, § 12.
Amendment Notes — The 2010 amendment reenacted the section without change.

§ 69-7-616. Administrative proceedings; sanctions; appeals; danger to public health.

(1) When a complaint is made against a person for violation of any of the provisions of this article, or any of the rules or regulations promulgated hereunder, the Director of the Regulatory Division of the Mississippi Department of Agriculture and Commerce, or his designee, shall act as reviewing officer. The complaint shall be filed with the Mississippi Department of Agriculture and Commerce. The reviewing officer shall cause to be delivered to the accused, in the manner described herein, a copy of the complaint and any supporting documents along with a summons requiring the accused to respond to the allegations within thirty (30) days after service of the summons and complaint upon the accused. The accused shall file with the department a written response to the complaint and any supporting documents within the thirty-day period. The accused may be notified by serving a copy of the summons and complaint on the accused or any of his officers, agents or employees by personal service or by certified mail. Upon the expiration of the thirty-day period, the reviewing officer shall review the complaint, the written response of the accused, if any, and all supporting documents offered by the parties in support of their respective positions. The reviewing officer's decision shall be based solely on the documents provided by the parties. If the reviewing officer determines that the complaint lacks merit, he may dismiss the complaint. If he finds that there are reasonable grounds showing that a violation of the statutes or regulations has been committed, he may impose any or all of the following penalties upon the accused: (a) levy a civil penalty in the amount of no more than One Thousand Dollars ($1,000.00) for each violation; (b) issue a stop-sale order; (c) require the accused to relabel any fish that he is offering for sale and which is not labeled in accordance with the provisions of this article; or (d) seize any fish that is not in compliance with this article, and destroy, sell or otherwise dispose of the fish, and apply the proceeds of any such sale to the costs herein and any civil penalties levied, with the balance to be paid to the accused. The reviewing officer's decision shall be in writing, and it shall be delivered to the accused by any of the methods described herein for service of the summons and complaint on the accused.

(2) Either the accused or the department may appeal the decision of the reviewing officer to the Commissioner of Agriculture and Commerce by filing a notice of appeal with the department within thirty (30) days of receipt of the reviewing officer's decision. If no appeal is taken from the order of the reviewing officer within the allotted time, the order shall then become final. In the event of an appeal, the commissioner, or his designee, shall conduct a full evidentiary hearing relative to the charges. The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Compliance with such subpoenas may be enforced by any court of general jurisdiction in this state. The testimony of witnesses shall be upon oath

or affirmation, and they shall be subject to cross-examination. The proceedings shall be recorded by a court reporter. The commissioner shall have all the powers of the reviewing officer described herein, and the commissioner may affirm, reverse or modify the order of the reviewing officer. The commissioner's decision shall be in writing, and it shall be delivered to the parties in the same manner that the summons and complaint may be served upon the accused.

(3) Either the accused or the department may appeal the decision of the commissioner to the circuit court of the county of residence of the accused, or if the accused is a nonresident of the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County, Mississippi. The appellant has the obligation of having the record transcribed and filed with the circuit court. The appeal shall otherwise be governed by all applicable laws and rules affecting appeals to the circuit court. If no appeal is perfected within the required time, the decision of the commissioner, or his designee, shall then become final.

(4) The decision of the circuit court may then be appealed by either party to the Mississippi Supreme Court in accordance with the existing laws and rules affecting such appeals.

(5) Where any violation of this article, or the rules and regulations promulgated hereunder, occurs, or is about to occur, that presents a clear and present danger to the public health, safety or welfare requiring immediate action, any of the department's field inspectors and any other persons authorized by the commissioner, may issue an order to be effective immediately, before notice and a hearing, that imposes any or all of the penalties described herein against the accused. The order shall be served upon the accused in the same manner that the summons and complaint may be served upon him. The accused shall then have thirty (30) days after service of the order upon him within which to request an informal administrative review before the reviewing officer, or his designee, as described herein. The accused shall include within his request all documents that support his position. The department may also submit any documents that support its position. If the accused makes such a request within such time, the reviewing officer, or his designee, shall review the documents provided by the parties and render a written decision within thirty (30) days after such request is made. Upon the making of such a request, the procedure described herein shall be followed, except that there is no need for a complaint to be filed against the accused. If the accused does not request an administrative review within such time frame, then he shall have waived his right to an administrative review.

SOURCES: Laws, 2002, ch. 506, § 7; reenacted without change, Laws, 2010, ch. 304, § 13, eff from and after passage (approved Feb. 17, 2010.)

Editor's Note — This section was reenacted without change by ch. 304, § 13.

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 69-7-617. Information concerning production and sales of catfish products.

The commissioner shall publish at least biannually, in such form as he may deem proper, information concerning the sale of catfish products, together with such data on their production and use as he may consider advisable provided that the information concerning production and sales of catfish products shall not disclose the operation of any person.

SOURCES: Laws, 1975, ch. 308, § 9, eff 180 days from and after passage (approved February 14, 1975); reenacted without change, Laws, 2010, ch. 304, § 14, eff from and after passage (approved Feb. 17, 2010.)

Editor's Note — This section was reenacted without change by ch. 304, § 14.

Amendment Notes — The 2010 amendment reenacted the section without change.

Cross References — Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 69-7-619. Repealed.

Repealed by Laws of 2010, ch. 304, § 15, eff from and after passage (approved Feb. 17, 2010).

§ 69-7-619. [Laws, 2008, ch. 449, § 8, eff July 1, 2008.]

Editor's Note — Former § 69-7-619 provided for the repeal of §§ 69-7-601 through 69-7-617.

ARTICLE 15.

MISSISSIPPI CATFISH PROCESSOR FAIR PRACTICES ACT.

SEC.

69-7-651. Short title.
69-7-653. Administration of article.
69-7-655. Legislative findings and purpose.
69-7-657. Definitions.
69-7-659. Methods of purchasing catfish products; bonds and other security requirements; unfair practices.
69-7-661. Registration of processors; orders with respect to insolvent registrants.
69-7-663. Unlawful practices.
69-7-665. Promulgation of rules and regulations.
69-7-667. Injunctions against violations; judicial review.
69-7-669. Liability of violators; enforcement.

§ 69-7-651. Short title.

This chapter shall be known and may be cited as the "Mississippi Catfish Processor Fair Practices Act of 1986."

SOURCES: Laws, 1986, ch. 431, § 1, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

Requirement that catfish processors use certain weighing device for weighing farm-raised catfish, see § 69-7-701.

Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

§ 69-7-653. Administration of article.

This article shall be administered by the Commissioner of Agriculture and Commerce.

SOURCES: Laws, 1986, ch. 431, § 2, eff from and after July 1, 1986.

Cross References — Department of Agriculture and Commerce generally, see §§ 69-1-1 et seq.

§ 69-7-655. Legislative findings and purpose.

The Legislature finds that a burden on and an obstruction to intrastate commerce in the catfish farming industry is caused when payment is not made for the catfish and that such arrangements are contrary to the public interest. This article is intended to remedy such burden on and obstruction to intrastate commerce in catfish and to protect the public interest.

SOURCES: Laws, 1986, ch. 431, § 3, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

§ 69-7-657. Definitions.

For purposes of this article, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Capable of use as human food" means and shall apply to any catfish or part or product thereof unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or unless it is naturally inedible by humans.

(b) "Cash sale" means a sale in which the seller does not expressly extend credit to the buyer.

(c) "Catfish" means any species within the family of Ictaluridae.

(d) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi.

(e) "Direct retail sale" means the sale of catfish products directly to the consumer.

(f) "Person" includes any individual, partnership, corporation and association or other legal entity.

(g) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing or holding catfish products.

(h) "Producer" means any person engaged in the business of producing catfish, by any method.

(i) "Product" means any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof.

(j) "Secured party" means a lender who has a perfected security interest pursuant to the Uniform Commercial Code in the catfish being sold.

SOURCES: Laws, 1986, ch. 431, § 4; Laws, 2004, ch. 377, § 5; Laws, 2005, ch. 390, § 1, eff from and after passage (approved Mar. 16, 2005.)

Cross References — Provisions of the Uniform Commercial Code relative to secured transactions, see §§ 75-9-101 et seq.

§ 69-7-659. Methods of purchasing catfish products; bonds and other security requirements; unfair practices.

(1) Each processor shall use one of the following methods to purchase catfish products:

(a) The processor may deliver to the producer or his duly authorized representative and any secured parties the full amount of the purchase price on the same day the catfish product is purchased and possession is transferred.

(b) The processor may before the close of the twenty-eighth (28th) calendar day following the purchase of the catfish products and transfer of possession thereof, deliver to the producer or his duly authorized representative and any secured parties the full amount of the purchase price. If the producer or his duly authorized representative or secured parties are not present to receive payment at the point of transfer or possession, as herein provided, the processor shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the producer and any secured parties, within the time limits specified in this subsection. Such action shall be deemed in compliance with the requirement for prompt payment under this paragraph.

(c) The parties to the purchase and sale of catfish products may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in paragraphs (a) or (b) provided the manner of payment does not interfere with the rights of secured parties. Any such agreement shall be disclosed in the records of any producer selling the catfish, and in the processors records and on the accounts or other documents issued by the processors relating to the transaction.

(2) In the event the processor shall elect the method prescribed in subparagraph (1)(b) of this section, to purchase catfish products, such processor shall, prior to such transaction, be required to:

(a) Be bonded in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) or in an amount which may be determined by the commissioner;

(b) Post a security bond in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) or in an amount which may be determined by the commissioner; or

(c) Provide cash security, letters of credit and/or such other evidences of security as shall be authorized by the commissioner.

(3) Any delay or attempt to delay, by a processor purchasing catfish products, the collection of funds as herein provided, or otherwise, for the purpose of or resulting in extending the normal period of payment for such catfish shall be considered an "unfair practice" in violation of this article.

SOURCES: Laws, 1986, ch. 431, § 5, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 69-7-661. Registration of processors; orders with respect to insolvent registrants.

On and after July 1, 1986, every catfish processor shall register with the Commissioner of Agriculture and Commerce. The commissioner shall promulgate such rules and regulations as he may deem necessary to secure the performance of catfish purchasing obligations, and whenever, after due notice and hearing, the commissioner finds any registrant is insolvent or has violated any provisions of this article he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five (5) days, unless suspended or modified or set aside by the commissioner or a court of competent jurisdiction. If the commissioner finds any processor is insolvent, he may after notice and hearing issue an order requiring such processor to cease and desist from purchasing catfish while insolvent except under such conditions as the commissioner may prescribe to effectuate the purposes of this article. Provided, however, that (a) those processors whose average annual purchases do not exceed Fifty Thousand Dollars ($50,000.00), and (b) those processors who deliver to the producer or his duly authorized representative the full amount of the purchase price on the same day the catfish product is purchased and possession thereof is transferred, shall be exempt from the provisions of this section.

SOURCES: Laws, 1986, ch. 431, § 6, eff from and after July 1, 1986.

Cross References — Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

§ 69-7-663. Unlawful practices.

It shall be unlawful, with respect to catfish or catfish products, for any processor to engage in or use any unfair, unjustly discriminatory, or deceptive practice.

SOURCES: Laws, 1986, ch. 431, § 7, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

Requirement that catfish processors use certain weighing device for weighing farm-raised catfish, see § 69-7-701.

§ 69-7-665. Promulgation of rules and regulations.

(1) The commissioner is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this article.

(2) Before the issuance, amendment or repeal of any rule or regulation authorized by this article, the commissioner shall publish the proposed regulation, amendment or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the commissioner shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

SOURCES: Laws, 1986, ch. 431, § 8, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

§ 69-7-667. Injunctions against violations; judicial review.

(1) The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule or regulation promulgated under this article, notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond.

(2) Any person adversely affected by an act, order or ruling made by the commissioner pursuant to the provisions of this article may, within forty-five (45) days thereafter, bring action in the Hinds County Circuit Court, First Judicial District, for judicial review of such actions. The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies, or in the absence or inadequacy thereof any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

SOURCES: Laws, 1986, ch. 431, § 9, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

§ 69-7-669. Liability of violators; enforcement.

(1) If any person subject to this article violates any of the provisions of this article, or of any order of the commissioner under this article, relating to the purchase, sale or handling of catfish, he shall be liable to the person or person injured thereby for the full amount of damages sustained in consequence of such violation.

(2) Such liability may be enforced either (a) by complaint to the commissioner or (b) by suit in any circuit court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this article are in addition to such remedies.

SOURCES: Laws, 1986, ch. 431, § 10, eff from and after July 1, 1986.

Cross References — Mississippi Catfish Marketing Law of 1975, see §§ 69-7-601 et seq.

ARTICLE 17.

WEIGHING DEVICES FOR FARM-RAISED CATFISH.

SEC.
69-7-701. Use of weighing device by catfish processors.

§ 69-7-701. Use of weighing device by catfish processors.

(1) For purposes of this section, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Catfish" means any species within the family of Ictaluridae.

(b) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing or holding catfish products.

(2) When making a weight determination of farm-raised catfish, the processor shall weigh the catfish as they are unloaded from the live haul truck and shall drain any water from the weighing baskets before the catfish are weighed. No deductions shall be made thereafter for water in the weighing baskets. The processor shall also use a weighing device that is of a type suitable for the weighing of farm-raised catfish and subject to the provisions of Section 75-27-19, Mississippi Code of 1972.

(3) Such weighing device shall electronically print a ticket which provides an exact duplicate of the weight indicated. A copy of this ticket shall be furnished to the owner of the catfish. Such ticket shall also include, but is not limited to, the following:

(a) The name and address of the processor;

(b) The name of the owner of the catfish being weighed;

(c) The date the catfish is weighed;

(d) The signature of the individual who weighs the farm-raised catfish recorded on the weight ticket;

(e) The device should print zero (0) before each weighing; and

(f) Such additional information as the Commissioner of Agriculture and Commerce deems necessary for the lawful and accurate recording of the weight of farm-raised catfish.

(4) Deductions for trash fish, turtles and other foreign materials shall be determined by a separate electronic weighing of the same with a printed ticket provided to the producer.

SOURCES: Laws, 1990, ch. 301, § 1; Laws, 1991, ch. 469, § 1; Laws, 2004, ch. 377, § 6; Laws, 2005, ch. 390, § 2, eff from and after passage (approved Mar. 16, 2005.)

ARTICLE 19.

GRADING AND CERTIFICATION OF FRUITS AND NUTS.

SEC.

69-7-751. Legislative declaration and intent.
69-7-753. Food Products Certification Office; creation; establishment; and responsibilities.
69-7-755. Hiring of marketing managers; qualifications and salaries; Producer Advisory Board.

§ 69-7-751. Legislative declaration and intent.

The Legislature declares a need to promote Mississippi agricultural products to raise the overall quality of fruits, vegetables and nuts; and it is the intent of the Legislature that fruits, vegetables and nuts produced or processed, or both, in the State of Mississippi be certified and graded.

SOURCES: Laws, 1994, ch. 605, § 3, eff from and after July 1, 1994.

§ 69-7-753. Food Products Certification Office; creation; establishment; and responsibilities.

There is created in the Department of Agriculture and Commerce a Food Products Certification Office. This office shall establish grading and certification processes for fruits, vegetables and nuts. This office shall also establish regulations and procedures to determine whether a product is produced or processed, or both, in Mississippi. The Food Products Certification Office shall be responsible for:

(a) Inspecting, grading and certifying fruits, vegetables and nuts;

(b) Coordinating and developing markets for Mississippi farmers who produce fruits, vegetables and nuts;

(c) Managing or assisting in the management of the vegetable marketing sheds; and

(d) Assisting farmers in the production of fruits and vegetables with the greatest market demand that are most adaptable to each production area.

SOURCES: Laws, 1994, ch. 605, § 4, eff from and after July 1, 1994.

§ 69-7-755. Hiring of marketing managers; qualifications and salaries; Producer Advisory Board.

The Department of Agriculture and Commerce shall hire not more than seven (7) marketing managers. The qualifications and salaries for the marketing managers shall be established by the State Personnel Board. Marketing managers shall be employed from a list of applicants approved by the State Personnel Board and recommended by the Director of the Mississippi Cooperative Extension Service, the Executive Director of the Agribusiness Council and the Commissioner of Agriculture, or their designees. Marketing managers shall be assigned to one or more of the marketing sheds at Booneville, Louisville, Wiggins, Bassfield, Taylorsville, Newton, Kemper County and Leakesville. Each of these marketing sheds shall be provided with a digital weighing scale to ensure accurate weight/grade. Each marketing shed shall establish a Producer Advisory Board consisting of four (4) local farmer producers of nuts, fruits or vegetables and three (3) produce industry representatives.

SOURCES: Laws, 1994, ch. 605, § 5, eff from and after July 1, 1994.

CHAPTER 8

Beef Promotion And Research Program

Sec.
69-8-1. Purpose.
69-8-3. Definitions.
69-8-5. Mississippi Beef Industry Council created; membership; organization; rules and regulations; certain officers to be bonded.
69-8-7. Referendum on assessments.
69-8-9. Collection and remittance of assessments.
69-8-11. Council permitted to accept gifts, donations and grants; submission of annual report of revenues and expenditures to commissioner; administrative costs.
69-8-13. Refund of assessments.
69-8-15. Penalties for violations.

§ 69-8-1. Purpose.

The purpose of this chapter shall be to promote the growth and development of the cattle industry in Mississippi through research, advertisement, promotions, education and market development in the absence of any federal programs.

SOURCES: Laws, 2005, ch. 429, § 1, eff from and after passage (approved Mar. 21, 2005.)

§ 69-8-3. Definitions.

For the purposes of this chapter, the following terms shall have the meanings ascribed to them herein unless the context clearly indicates otherwise:

(a) "Producer" means any person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if that person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee or other service fee.

(b) "Collecting person" means any livestock dealer licensed under the Packers and Stockyards Act of 1921, as amended, who makes payment to a producer for cattle purchased in Mississippi.

(c) "Council" means the "Mississippi Beef Industry Council."

(d) "Commissioner" means the Commissioner of Agriculture and Commerce for the State of Mississippi.

SOURCES: Laws, 2005, ch. 429, § 2, eff from and after passage (approved Mar. 21, 2005.)

§ 69-8-5. Mississippi Beef Industry Council created; membership; organization; rules and regulations; certain officers to be bonded.

(1) The Mississippi Beef Industry Council is created and shall be composed of eighteen (18) members as follows:

(a) Seven (7) members appointed by the Mississippi Cattlemen's Association, of whom one (1) shall be a meat scientist or a meat packer;

(b) One (1) member appointed by the Mississippi Cattlewomen's Association;

(c) Five (5) members appointed by the Mississippi Farm Bureau Federation, of whom one (1) shall be a dairy farmer and one (1) shall be a beef retailer;

(d) Five (5) members appointed by the Mississippi Livestock Marketing Association.

(2) Within thirty (30) days after the levy of the national beef promotion and research program established by the "Beef Promotion and Research Act of 1985" is finally adjudicated unconstitutional, each organization shall select its members to serve on the council. The members of the council shall meet and organize after their appointment and shall select a chairman, vice chairman and secretary-treasurer from the membership of the council. The council may establish rules and regulations for the administration of the duties of the council. The minutes of the council shall reflect the votes taken by the council concerning any contracts for projects of research, education, advertisement or promotion of the beef industry.

(3) The chairman, vice chairman and secretary-treasurer shall be bonded in an amount not less than Twenty Thousand Dollars ($20,000.00). The cost of the bonds shall be paid from the funds received under this chapter.

SOURCES: Laws, 2005, ch. 429, § 3, eff from and after passage (approved Mar. 21, 2005.)

§ 69-8-7. Referendum on assessments.

(1) Within ninety (90) days after the levy of the national beef promotion and research program established by the "Beef Promotion and Research Act of 1985" is finally adjudicated unconstitutional, the commissioner is authorized to call a referendum allowing producers to vote as to whether an assessment of One Dollar ($1.00) per head on all cattle sold in the state shall be levied for the purpose of promotion and development of the Mississippi cattle industry.

(a) A cattle producer who owned or produced cattle in the year immediately preceding the referendum shall be entitled to cast one (1) vote.

(b) The council shall bear all expenses incurred in conducting a referendum.

(c) If a majority of the producers voting in the referendum vote in favor of the assessment, then a sum of One Dollar ($1.00) per head shall be levied on all cattle sold in the state. This assessment shall be applicable to all sales made on or after a date specified by the commissioner but no later than ninety (90) days after certification of the results of the election.

(d) The assessment shall be a continuing levy until either terminated by the council or repealed by a majority vote in a subsequent referendum.

(2) Subsequent referendums:

(a) Upon petition by ten percent (10%) of the producers, the commissioner shall call for a subsequent referendum to allow producers to vote on the assessment.

(b) If a referendum fails to receive a majority of affirmative votes, then the commissioner shall be authorized to call another referendum in the next succeeding year. No such referendum shall be held within a period of twelve (12) months from the date on which the last referendum was held.

(3) If this program is terminated as a result of referendum vote or for any other reason, collections received prior to the last day of the program as designated by the commissioner, will be expended within ninety (90) days in the manner in which the program was operated.

(4) The commissioner, with the approval of the council, may promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, as may be necessary to carry out this chapter.

SOURCES: Laws, 2005, ch. 429, § 4, eff from and after passage (approved Mar. 21, 2005.)

§ 69-8-9. Collection and remittance of assessments.

(1) Each collecting person shall collect and remit the assessments levied by this section in accordance with Section 69-8-7.

(2) Each collecting person shall remit all assessments to the council with the required report no later than the fifteenth day of the month following the close of the reporting period.

(a) Assessments collected by the council are not state funds and will not be required to be deposited in the State Treasury.

(b) Each calendar month shall be a reporting period. The reporting period shall end at the close of business on the last day of the month.

(c) Required report information and forms shall be determined and provided by the council.

SOURCES: Laws, 2005, ch. 429, § 5, eff from and after passage (approved Mar. 21, 2005.)

§ 69-8-11. Council permitted to accept gifts, donations and grants; submission of annual report of revenues and expenditures to commissioner; administrative costs.

(1) The council may accept monetary gifts, donations and grants from public as well as private sources.

(2) By July 31 of each year the council shall submit to the commissioner a complete report of all revenues and expenditures that were generated by the

administration of this program in a format that has been approved by the commissioner.

(3) Of the monies collected under this program, an amount not to exceed fifteen percent (15%) of the total revenues per year shall be expended on the administrative costs of the program.

SOURCES: Laws, 2005, ch. 429, § 6, eff from and after passage (approved Mar. 21, 2005.)

§ 69-8-13. Refund of assessments.

(1) Any producer may request and receive a refund of assessments levied on the sale of the producer's cattle.

(a) The request may be made only by the producer.

(b) The request must be made to the council in writing within forty-five (45) days from the date of sale.

(c) The request must include the name and address of the sale market or purchaser, date of sale, number of head sold and assessed, and proof that the assessment was deducted.

(2) The council shall mail payment of assessment refunds to the requesting producer within thirty (30) days of receiving the request.

SOURCES: Laws, 2005, ch. 429, § 7, eff from and after passage (approved Mar. 21, 2005.)

§ 69-8-15. Penalties for violations.

(1) Any collecting person, who fails to file a report or pay any assessment within the time required by the commissioner, shall remit to the council a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) for each month of delay, or fraction thereof, beginning the first month after the report was required to be filed or the assessment became due.

(2) Any collecting person who makes a false claim shall be subject to a civil penalty of not more than One Thousand Dollars ($1,000.00) payable to the council.

(3) Any collecting person required to pay an assessment as provided by this chapter, who refuses to allow full inspection of their records by the council, or who shall hinder or in any way delay or prevent the inspection of their records is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars ($500.00).

SOURCES: Laws, 2005, ch. 429, § 8, eff from and after passage (approved Mar. 21, 2005.)

CHAPTER 9

Soybean Promotion Board

Sec.

69-9-1. Purpose of chapter.

69-9-3. Creation, membership and organization of board.

69-9-5. Levy of assessment; collection; enforcement; refund.

69-9-6. Collection of assessment under Soybean Promotion, Research and Consumer Information Act; disposition of funds collected.

69-9-7. Failure to file report or pay assessment; penalty.

69-9-9. Use of funds; annual report; penalty for failure to report.

69-9-11. Controlling effect of chapter.

69-9-13. State Tax Commission to assist department in collecting assessments.

69-9-15. Commissioner authorized to audit Soybean Promotion Board; information to be included in audit; injunction for violations of chapter.

§ 69-9-1. Purpose of chapter.

The purpose of this chapter is to promote the growth and development of the soybean industry in Mississippi by research, advertisement promotions and education and market development, thereby promoting the general welfare of the people of this state.

SOURCES: Codes, 1942, § 4575-231; Laws, 1970, ch. 265, § 1; brought forward without change, Laws, 2009, ch. 393, § 1, eff from and after July 1, 2009.

Cross References — Provisions regarding promotion of rice, see §§ 69-10-1 et seq.

§ 69-9-3. Creation, membership and organization of board.

(1) The Mississippi Soybean Promotion Board is hereby created, to be composed of twelve (12) members to be appointed by the Governor to serve terms of three (3) years, as hereinafter provided. All of the twelve (12) members of the board shall be producers of soybeans in the State of Mississippi. Within ten (10) days following the effective date of this chapter, each of the following organizations, namely, Mississippi Farm Bureau Federation, Inc., Mississippi Feed and Grain Association, Mississippi Soybean Association and Delta Council shall submit the names of six (6) soybean producers to the Governor, and he shall appoint three (3) members from the nominees of each organization to serve on the board on rotating three-year terms. The original board shall be appointed with members of each of the aforenamed organizations appointed as follows: one (1) for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. Each year thereafter, not less than thirty (30) days prior to the expiration of the terms of expiring board members, the aforenamed organizations shall submit the names of three (3) nominees to the Governor and succeeding boards shall be appointed by the Governor in the same manner, giving equal representation to each organization. Vacancies which occur shall be filled in the same manner as the original appointments were made.

(2) The members of the board shall meet and organize immediately after their appointment, and shall elect a chairman, vice chairman and secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by such officers or specifically designated by the board. The chairman, vice chairman and secretary-treasurer shall be bonded in an amount not less than Twenty Thousand Dollars ($20,000.00). The cost of said bonds shall be paid from the funds received under the provisions of this chapter. Such bond shall be a security for any illegal act of such member of the board and recovery thereon may be had by the state for any injury by such illegal act of such member. The board may establish rules and regulations for its own government and the administration of the affairs of the board.

SOURCES: Codes, 1942, § 4575-232; Laws, 1970, ch. 265, § 2; brought forward without change, Laws, 2009, ch. 393, § 2, eff from and after July 1, 2009.

§ 69-9-5. Levy of assessment; collection; enforcement; refund.

(1) There is imposed and levied an assessment at the rate of One Cent (1¢) per bushel on all soybeans grown within the State of Mississippi, and such assessment shall be deducted by the purchaser from the amount paid the producer at the first point of sale, whether within or without the state. Assessments on soybeans put under loan to the Commodity Credit Corporation or purchased by the Commodity Credit Corporation and delivered to it shall be payable when such soybeans are placed under loan or are purchased. The Commodity Credit Corporation may require deduction and payment of the assessment from the loan proceeds or from the purchase price on the behalf of the producer. Assessments on soybeans put under loan to the Commodity Credit Corporation and redeemed by the producer before the takeover date, if already paid by having been deducted from the loan proceeds, shall not be deducted by each handler from the amount paid the producer at the first point of sale as provided in this section; otherwise, the assessment shall be deducted. Any soybean producer may request and receive a refund of the amount of assessment deducted from the sale of his soybeans provided he makes a written application with the Department of Agriculture and Commerce within sixty (60) days from date of sale, supported by bona fide copies of sales slips signed by the purchaser. The application forms shall be prepared by the Department of Agriculture and Commerce and shall be available at the first point of sale. All such applications shall be processed and refunds paid by the Department of Agriculture and Commerce within sixty (60) days after the funds have been received by the department. Each marketing agency shall be furnished a poster to be displayed in a prominent place, stating that refunds are available and forms to be used, including self-addressed envelopes, are available at its office.

(2) The assessment imposed and levied by this section shall be payable to and collected by the Department of Agriculture and Commerce, hereafter referred to as "the department," from the purchaser of such soybeans at the first point of sale or from the Commodity Credit Corporation as provided in

subsection (1) of this section. The proceeds of the assessment collected by the department shall be deposited with the State Treasurer in a special fund, known as the "Mississippi Soybean Promotion Fund," and promptly remitted to the Mississippi State University Foundation under the terms and conditions as the Soybean Promotion Board deems necessary to ensure that the assessments are used properly in carrying out the purposes of this chapter. The State Fiscal Officer is authorized to issue warrants for the payment of monies from the Mississippi Soybean Promotion Fund upon requisition by the Commissioner of Agriculture and Commerce, or his designee, for refunds to producers as provided under subsection (1) of this section.

(3) The department shall pay over to the Mississippi Soybean Promotion Fund the funds collected, less three and one-half percent (3-½%) of the gross amount collected. The payments to the Mississippi Soybean Promotion Board shall be accompanied by a complete report of all funds collected and disbursed.

(4) Each purchaser or the Commodity Credit Corporation shall keep a complete and accurate record of all soybeans handled by him and shall furnish each producer with a signed sales slip showing the number of bushels purchased from him and the amount deducted by him for the Mississippi Soybean Promotion Fund. Such records shall be in such form and contain such other information as the department shall by rule or regulation prescribe. The records shall be preserved by the purchaser for a period of two (2) years and shall be offered for inspection at any time upon oral or written demand by the department or any duly authorized agent or representative thereof. Every purchaser or the Commodity Credit Corporation, at such time or times as the department may require, shall submit reports or other documentary information deemed necessary for the efficient and equitable collection of the assessment imposed in this chapter. The department shall have the power to cause any duly authorized agent or representative to enter upon the premises of any purchaser of soybeans and examine or cause to be examined by such agent only books, papers and records which deal in any way with the payment of the assessment or enforcement of the provisions of this chapter.

SOURCES: Codes, 1942, § 4575-233; Laws, 1970, ch. 265, § 3; Laws, 1972, ch. 429, § 1; Laws, 1977, ch. 401; Laws, 1987, ch. 452, § 1; Laws, 1992, ch. 510, § 1; Laws, 2006, ch. 505, § 1; brought forward without change, Laws, 2009, ch. 393, § 3, eff from and after July 1, 2009.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor, " and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Payment into Mississippi Soybean Promotion Fund of proceeds from collection of assessment under Soybean Promotion, Research and Consumer Information Act, see § 69-9-6.

ATTORNEY GENERAL OPINIONS

Retail sales tax exemption for soybeans grown as seed is of no force and effect with regard to promotional assessments; therefore, effective July 1, 1992, Department of Agriculture and Commerce should collect said fees from sale of all soybeans grown within Mississippi. Ross, July 29, 1992, A.G. Op. #92-0552.

The Department of Agriculture and Commerce should remit soybean assessments to the MSU Foundation without delay and with reasonable speed after deposit in the Soybean Promotion Fund, unless it finds there are factual circumstances that prohibit such a remittance. Spell, June 23, 2006, A.G. Op. 06-0195.

§ 69-9-6. Collection of assessment under Soybean Promotion, Research and Consumer Information Act; disposition of funds collected.

(1) The Department of Agriculture and Commerce is authorized to collect the assessment created by the Soybean Promotion, Research and Consumer Information Act administered by the United States Department of Agriculture on behalf of the Mississippi Soybean Promotion Board.

(2) The department shall pay over to the Mississippi Soybean Promotion Fund, as established in Section 69-9-5, all funds collected under this section. The State Fiscal Officer is authorized to issue warrants for the payment of monies from the proceeds of this fund upon requisition by the Mississippi Commissioner of Agriculture and Commerce, or his designee, in accordance with federal statutes governing this section.

(3) The Mississippi Department of Agriculture and Commerce shall submit to the Soybean Promotion Board a budget detailing and justifying the administrative costs of the department in administering the provisions of this chapter, and such budget must be approved by the Soybean Promotion Board by April 1 of each year. The department is further authorized to retain an amount not to exceed three and one-half percent (3-½%) of the funds collected under the provisions of this section as administrative fees. The amount retained by the department must be approved by the Soybean Promotion Board by July 1 of each year. This amount may be retained from any funds collected on behalf of the Soybean Promotion Board, including those collected under the provisions of Section 69-9-5.

(4) The board shall make a report of all income and expenditures made annually and provide copies of such report to the department.

SOURCES: Laws, 1991, ch. 607 § 1; Laws, 1992, ch. 510, § 2; Laws, 2006, ch. 505, § 2, eff from and after passage (approved Mar. 29, 2006.)

§ 69-9-7. Failure to file report or pay assessment; penalty.

(1) Any purchaser who fails to file a report or to pay any assessment within the time required by the department shall forfeit to the department a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) of such amount for each month of delay or fraction thereof after the first month after such report was required to be filed or such assessment

became due. The penalty shall be paid to the department and shall be disposed of by it in the same manner as funds derived from the payment of the assessment imposed herein.

(2) The department shall collect the penalties levied herein, together with the delinquent assessment, by any or all of the following methods:

(a) By voluntary payment by the person liable.

(b) By legal proceedings instituted in a court of competent jurisdiction.

(3) Any person required to pay the assessment provided for in this chapter who fails to remit same or who refuses to allow full inspection of the premises, or such books, records or other documents relating to the liability of such person for the assessment herein imposed, or who shall hinder or in any way delay or prevent such inspection, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or both.

(4) The provisions of this chapter shall not apply to any person who purchases one thousand (1,000) or less bushels of soybeans in any calendar year, provided he is not regularly engaged in the purchase of soybeans.

SOURCES: Codes, 1942, § 4575-234; Laws, 1970, ch. 265, § 4; Laws, 1992, ch. 510, § 3; brought forward without change, Laws, 2009, ch. 393, § 4, eff from and after July 1, 2009.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-9-9. Use of funds; annual report; penalty for failure to report.

(1) The Mississippi Soybean Promotion Board shall plan and conduct a program of research, education and advertising designed to promote the soybean industry in Mississippi and said board is authorized to use the funds derived from the assessment imposed herein for these purposes, including basic administration expenses of said plan. Use of these funds may be applied, as prescribed in this section, within or without the State of Mississippi, including regional, national and international research and promotional applications.

(2) The funds may be expended only for the purposes set out in this chapter and shall be spent in no manner for political purposes. A report of all expenditures shall be made annually on December 31, with four (4) copies of the report to be filed and presented during regular sessions of the Mississippi Legislature with each of the following: the Chairman of the House of Representatives Agriculture Committee, the Chairman of the Senate Agriculture Committee, the Mississippi Department of Agriculture and Commerce and the State Auditor.

(3) If the board fails to make an annual report in violation of the provisions of subsection (2) of this section, the board shall be subject to a fine of not more than Five Hundred Dollars ($500.00).

SOURCES: Codes, 1942, § 4575-235; Laws, 1970, ch. 265, § 5; Laws, 2009, ch. 393, § 5, eff from and after July 1, 2009.

§ 69-9-11. Controlling effect of chapter.

Notwithstanding the provisions of any laws or parts of laws in conflict herewith, the provisions of this chapter shall be controlling to the extent of the conflict.

SOURCES: Codes, 1942, § 4575-237; Laws, 1970, ch. 265, § 7; brought forward without change, Laws, 2009, ch. 393, § 6, eff from and after July 1, 2009.

§ 69-9-13. State Tax Commission to assist department in collecting assessments.

The State Tax Commission shall provide any information necessary to assist the Mississippi Department of Agriculture and Commerce in collecting the assessments provided for in this chapter.

SOURCES: Laws, 1992, ch. 510, § 4; brought forward without change, Laws, 2009, ch. 393, § 7, eff from and after July 1, 2009.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 69-9-15. Commissioner authorized to audit Soybean Promotion Board; information to be included in audit; injunction for violations of chapter.

(1) The commissioner may conduct an audit of the board to verify compliance with any rules and regulations promulgated for the efficient enforcement of this chapter.

(2) Under this section, the audited board shall provide information to the commissioner that verifies the amounts received and expended from the fees assessed and collected by the department and remitted to the board. Records maintained in the course of the normal conduct of business by the board may serve as verification.

(3) The commissioner may apply for and the court may grant a temporary or permanent injunction on disbursements made to the board from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

SOURCES: Laws, 2009, ch. 393, § 8, eff from and after July 1, 2009.

CHAPTER 10

Rice Promotion Board

Sec.	
69-10-1.	Purpose.
69-10-2.	Mississippi Rice Promotion Board; membership; organization and administration.
69-10-3.	Repealed.
69-10-5.	Assessment on rice grown in state; rice promotion fund; records and reports.
69-10-7.	Penalties; exemption.
69-10-9.	Expenditure of funds; report of expenditures; penalty for failure to report.
69-10-11.	Provisions to be controlling.
69-10-13.	State Tax Commission to assist department in collecting assessments.
69-10-15.	Commissioner authorized to audit Rice Promotion Board; information to be included in audit; injunction for violations of chapter.

§ 69-10-1. Purpose.

The purpose of this chapter is to promote the growth and development of the rice industry in Mississippi by research, advertisement promotions and education and market development, thereby promoting the general welfare of the people of this state.

SOURCES: Laws, 1981, ch. 384, § 1; brought forward without change, Laws, 2009, ch. 393, § 9, eff from and after July 1, 2009.

Cross References — Provisions regarding promotion of soybeans, see §§ 69-9-1 et seq.

§ 69-10-2. Mississippi Rice Promotion Board; membership; organization and administration.

(1) The Mississippi Rice Promotion Board is created, to be composed of twelve (12) members to be appointed by the Governor to serve terms of four (4) years, as hereinafter provided. All of the twelve (12) members of the board shall be producers of rice in the State of Mississippi. Within ten (10) days following March 9, 1995, the Mississippi Farm Bureau Federation, Inc., the Mississippi Rice Council for Market Development and the Delta Council shall each submit the names of six (6) rice producers to the Governor, and he shall appoint four (4) members from the nominees of each organization to serve on the board on rotating four-year terms. The original board shall be appointed with members of each of the aforenamed organizations appointed as follows: one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years and one (1) for four (4) years. Each year thereafter, not less than thirty (30) days before the expiration of the terms of expiring board members, the aforenamed organizations shall submit the names of four (4) nominees to the Governor and succeeding boards shall be appointed by the Governor in the same manner,

giving equal representation to each organization. Vacancies which occur shall be filled in the same manner as the original appointments were made.

(2) The members of the board shall meet and organize immediately after their appointment, and shall elect a chairman, vice chairman and secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by such officers or specifically designated by the board. The chairman, vice chairman and secretary-treasurer shall be bonded in an amount not less than Twenty Thousand Dollars ($20,000.00). The cost of the bonds shall be paid from the funds received under the provisions of Section 69-10-1 et seq. Such bond shall be a security for any illegal act of such member of the board and recovery thereon may be had by the state for any injury by such illegal act of such member. The board may establish rules and regulations for its own government and the administration of the affairs of the board.

SOURCES: Laws, 1995, ch. 310, § 1; brought forward without change, Laws, 2009, ch. 393, § 10, eff from and after July 1, 2009.

§ 69-10-3. Repealed.

Repealed by Laws of 1995, ch. 310, § 2, eff July 1, 1995.
[Laws, 1994, ch. 421, § 1]

SOURCES: [Laws, 1981, ch. 284, § 2].

Editor's Note — Former § 69-10-3 was entitled: Mississippi Rice Promotion Board; membership; organization and administration.

§ 69-10-5. Assessment on rice grown in state; rice promotion fund; records and reports.

(1) There is imposed and levied an assessment at the rate of Two Cents (2¢) per bushel on all rice grown within the State of Mississippi; from and after July 1, 1991, the rate of assessment shall be increased by an additional One Cent (1¢) per bushel so that the total assessment equals Three Cents (3¢) per bushel. Such assessment shall be deducted by the purchaser from the amount paid the producer at the first point of sale, whether within or without the state. Assessments on rice put under loan to the Commodity Credit Corporation or purchased by the Commodity Credit Corporation and delivered to it shall be payable when such rice is placed under loan or is purchased. The Commodity Credit Corporation may require deduction and payment of the assessment from the loan proceeds or from the purchase price on the behalf of the producer. Assessments on rice put under loan to the Commodity Credit Corporation and redeemed by the producer before the takeover date, if already paid by having been deducted from the loan proceeds shall not be deducted by each miller or handler from the amount paid the producer at the first point of sale as provided in this section; otherwise, the assessment shall be deducted.

(2) The assessment imposed and levied by this section shall be payable to and collected by the Mississippi Department of Agriculture and Commerce,

hereafter referred to as "the department," from the purchaser of such rice at the first point of sale or from the Commodity Credit Corporation as provided in subsection (1) of this section. The proceeds of the assessment collected by the department shall be deposited with the State Treasurer in a special fund, the "Mississippi Rice Promotion Fund," and promptly remitted to a foundation under such terms and conditions as the Rice Promotion Board deems necessary to ensure that such assessments are used properly in carrying out the purposes of this chapter.

(3) The Mississippi Department of Agriculture and Commerce shall submit to the Mississippi Rice Promotion Board a budget detailing and justifying the administrative costs of the department in administering the provisions of this chapter, and such budget must be approved by the Mississippi Rice Promotion Board by April 1 of each year. The department shall pay over to the Mississippi Rice Promotion Fund the funds collected, less an amount not to exceed three and one-half percent (3-½%) of the gross amount collected. The amount withheld by the department must be approved by the Mississippi Rice Promotion Board by July 1 of each year. The payments to the Mississippi Rice Promotion Board shall be accompanied by a complete report of all funds collected and disbursed.

(4) Each purchaser or the Commodity Credit Corporation shall keep a complete and accurate record of all rice handled by him and shall furnish each producer with a signed sales slip showing the number of bushels purchased from him and the amount deducted by him for the Mississippi Rice Promotion Fund. Such records shall be in such form and contain such other information as the department shall by rule or regulation prescribe. The records shall be preserved by the purchaser for a period of two (2) years and shall be offered for inspection at any time upon oral or written demand by the department or any duly authorized agent or representative thereof. Every purchaser or the Commodity Credit Corporation, at such time or times as the commissioner of the department may require, shall submit reports or other documentary information deemed necessary for the efficient and equitable collection of the assessment imposed in this chapter. The department shall have the power to cause any duly authorized agent or representative to enter upon the premises of any purchaser of rice and examine or cause to be examined by such agent, only books, papers and records which deal in any way with respect to the payment of the assessment or enforcement of the provisions of this chapter.

SOURCES: Laws, 1981, ch. 384, § 3; Laws, 1983, ch. 315; Laws, 1987, ch. 452, § 2; Laws, 1991, ch. 307 § 1; Laws, 1992, ch. 563, § 1; reenacted and amended, Laws, 1994, ch. 421, § 2; Laws, 2005, ch. 435, § 1; reenacted and amended, Laws, 2008, ch. 400, § 1; brought forward without change, Laws, 2009, ch. 393, § 11; Laws, 2011, ch. 356, § 1, eff from and after passage (approved Mar. 14, 2011.)

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Amendment Notes — The 2011 amendment deleted former (5) which read: "This section shall stand repealed from and after July 1, 2011."

Cross References — State Tax Commission to assist department in collecting assessments provided for in this chapter, see § 69-10-13.

ATTORNEY GENERAL OPINIONS

Retail sales tax exemption for rice grown as seed is of no force and effect with regard to promotional assessments; therefore, effective July 1, 1992, Department of Agriculture and Commerce should collect said fees from sale of all rice grown within Mississippi. Ross, July 29, 1992, A.G. Op. #92-0552.

The Department of Agriculture and Commerce is the entity charged with collecting the state rice assessments, and the Commissioner, as executive head of the Department, may sign an agreement with the Commodity Credit Corporation for collection of certain rice assessments. Spell, Jan. 13, 2006, A.G. Op. 05-0634.

§ 69-10-7. Penalties; exemption.

(1) Any purchaser who fails to file a report or to pay any assessment within the time required by the department shall forfeit to the department a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) of such amount for each month of delay or fraction thereof after the first month after such report was required to be filed or such assessment became due. The penalty shall be paid to the department and shall be disposed of by it in the same manner as funds derived from the payment of the assessment imposed herein.

(2) The department shall collect the penalties levied herein, together with the delinquent assessment, by any or all of the following methods:

(a) By voluntary payment by the person liable.

(b) By legal proceedings instituted in a court of competent jurisdiction.

(3) Any person required to collect the assessment provided for in this chapter who fails to remit same or who refuses to allow full inspection of the premises, or such books, records or other documents relating to the liability of such person for the assessment herein imposed, or who shall hinder or in any way delay or prevent such inspection, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or both.

(4) The provisions of this chapter shall not apply to any person who purchases one thousand (1,000) or less bushels of rice in any calendar year, provided he is not regularly engaged in the purchase of rice.

SOURCES: Laws, 1981, ch. 384, § 4; Laws, 1992, ch. 563, § 2; brought forward without change, Laws, 2009, ch. 393, § 12, eff from and after July 1, 2009.

Cross References — State Tax Commission to assist department in collecting assessments provided for in this chapter, see § 69-10-13.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-10-9. Expenditure of funds; report of expenditures; penalty for failure to report.

(1) The Mississippi Rice Promotion Board shall plan and conduct a program of research, education and advertising designed to promote the rice industry in Mississippi. The board is authorized to use the funds derived from the assessment imposed herein for these purposes, including basic administration expenses of the plan; provided, however, that the avails of the additional One Cent (1¢) assessment imposed from and after July 1, 1991, shall be expended solely for programs of research to promote further development of the rice industry in this state. Use of these funds may be applied, as prescribed in this section, within or without the State of Mississippi, including regional, national and international research and promotional applications.

(2)(a) The Mississippi Legislature finds and declares that the factors which affect the ability of Mississippi rice farmers to market their crop are established by national and international forces in the world market. The Legislature further finds and declares that the expenditure of funds by the board for the purpose of influencing the development and implementation of national and international policy affecting the marketing of rice produced by Mississippi farmers is the expenditure of funds for a public purpose.

(b) The board may expend a portion of the funds received and administered by the board for the purpose of influencing the development and implementation of national and international policy affecting the marketing of rice produced by Mississippi farmers.

(c) The amount of funds expended by the board in each fiscal year for the purposes authorized in this subsection shall not exceed five percent (5%) of the budget of the board for that fiscal year.

(d) The board shall not expend any funds for the purpose of influencing any political activity.

(3) A report of all expenditures shall be made annually on December 31, with four (4) copies of the report to be filed and presented during regular sessions of the Mississippi Legislature with each of the following: the Chairman of the House of Representatives Agriculture Committee, the Chairman of the Senate Agriculture Committee, the Mississippi Department of Agriculture and Commerce and the State Auditor.

(4) If the board fails to make an annual report in violation of the provisions of subsection (2) of this section, the board shall be subject to a fine of not more than Five Hundred Dollars ($500.00).

SOURCES: Laws, 1981, ch. 384, § 5; Laws, 1991, ch. 307 § 2; Laws, 1994, ch. 421, § 3; Laws, 2009, ch. 393, § 13, eff from and after July 1, 2009.

§ 69-10-11. Provisions to be controlling.

Notwithstanding the provisions of any laws or parts of laws in conflict herewith, the provisions of this chapter shall be controlling to the extent of the conflict.

SOURCES: Laws, 1981, ch. 384, § 6; brought forward without change, Laws, 2009, ch. 393, § 14, eff from and after July 1, 2009.

§ 69-10-13. State Tax Commission to assist department in collecting assessments.

The State Tax Commission shall provide any information necessary to assist the Department of Agriculture and Commerce in collecting the assessments provided for in this chapter.

SOURCES: Laws, 1992, ch. 563, § 3; brought forward without change, Laws, 2009, ch. 393, § 15, eff from and after July 1, 2009.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 69-10-15. Commissioner authorized to audit Rice Promotion Board; information to be included in audit; injunction for violations of chapter.

(1) The commissioner may conduct an audit of the board to verify compliance with any rules and regulations promulgated for the efficient enforcement of this chapter.

(2) Under this section, the audited board shall provide information to the commissioner that verifies the amounts received and expended from the fees assessed and collected by the department and remitted to the board. Records maintained in the course of the normal conduct of business by the board may serve as verification.

(3) The commissioner may apply for and the court may grant a temporary or permanent injunction on disbursements made to the board from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

SOURCES: Laws, 2009, ch. 393, § 16, eff from and after July 1, 2009.

CHAPTER 11

Swine

Sec.
69-11-1. Declaration of purpose.
69-11-3. Definition of terms.
69-11-5. Feeding garbage to swine.
69-11-7. Authority of commissioner and state veterinarian.
69-11-9. Rules and regulations.
69-11-11. Inspection and investigation.
69-11-13. Quarantine powers.
69-11-15. Penalty.

§ 69-11-1. Declaration of purpose.

The purpose of this chapter is to eradicate and prevent the spread of contagious and infectious diseases of swine in the State of Mississippi through preventative methods based upon recommendations of leading veterinary medical authorities and animal disease research scientists to the effect that raw garbage keeps causative virus alive and the feeding of such garbage causes the spread of several contagious, infectious and deadly diseases of swine. Chief among these is hog cholera which is known to be spread among swine through the feeding of raw garbage. Trichinella infection in human population, foot and mouth disease, swine erysipelas, African swine fever, tuberculosis, brucellosis and other human and animal diseases have been associated with the feeding of garbage to swine. Since the production of swine is of great economic importance not only to the farmers of Mississippi but to the general economy of the state, it is deemed for the best interest and advancement of the agricultural economy and the general welfare of the State of Mississippi to prohibit the commercial feeding of garbage to swine from and after July 1, 1972.

SOURCES: Codes, 1942, § 4575-201; Laws, 1970, ch. 264, § 1, eff July 1, 1970.

RESEARCH REFERENCES

ALR. Liability of packer, foodstore, or restaurant for causing trichinosis. 96 A.L.R.3d 451.

§ 69-11-3. Definition of terms.

For the purpose of this chapter, the following words shall mean:

(a) "Commissioner" shall mean the commissioner of agriculture and commerce.

(b) "Person" means the state, any municipality, county, political subdivision, institution, individual, partnership, corporation or association.

(c) "Garbage" means putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of foods including animal and fowl carcasses or parts thereof.

(d) "Swine" means hogs, pigs or shoats.

SOURCES: Codes, 1942, § 4575-202; Laws, 1970, ch. 264, § 2, eff July 1, 1970.

§ 69-11-5. Feeding garbage to swine.

(1) It shall be unlawful for any person, municipality, county, political subdivision, governmental agency or department, institution, individual, partnership, corporation, association, other entity or organization to feed garbage to swine, except as permitted under subsection (2) of this section.

(2) This chapter shall not apply to any person who feeds only household garbage to swine for household consumption only.

(3) This chapter shall not apply to the Mississippi Department of Corrections. The department is authorized to feed to swine cooked garbage and vegetable refuse. The Mississippi Department of Corrections shall follow applicable state rules, regulations and guidelines that are equal to or exceed federal rules and regulations for cooking and feeding cooked garbage to swine. The Mississippi Department of Corrections may market and use for consumption swine that has been fed garbage.

SOURCES: Codes, 1942, §§ 4575-203, 4575-204; Laws, 1970, ch. 264, §§ 3, 4, eff July 1, 1970; Laws, 2001, ch. 357, § 1, eff from and after July 1, 2001.

§ 69-11-7. Authority of commissioner and state veterinarian.

The commissioner is hereby charged with the execution and enforcement of the provisions of this chapter and the state veterinarian shall have authority to exercise all of the powers vested in the commissioner in the enforcement of the provisions of this chapter and the rules and regulations promulgated hereunder.

SOURCES: Codes, 1942, § 4575-210; Laws, 1970, ch. 264, § 10, eff July 1, 1970.

§ 69-11-9. Rules and regulations.

The commissioner shall have power and authority to promulgate reasonable rules and regulations relating to the feeding of swine, the disposal of diseased and dead swine, and all other rules and regulations not in conflict with the provisions of this chapter designed to control and eradicate infectious and contagious diseases of swine as well as rules and regulations necessary to carry out the provisions of this chapter.

SOURCES: Codes, 1942, § 4575-211; Laws, 1970, ch. 264, § 11, eff July 1, 1970.

§ 69-11-11. Inspection and investigation.

The commissioner, the state veterinarian or any authorized employee of the department of agriculture and commerce shall have power and authority to enter upon any private or public property for the purpose of inspecting and investigating conditions relating to the feeding of swine to determine whether the requirements of this chapter are or are not being complied with and to inspect such premises for the purpose of eradicating and controlling contagious and infectious diseases of swine.

SOURCES: Codes, 1942, § 4575-208; Laws, 1970, ch. 264, § 8, eff July 1, 1970.

§ 69-11-13. Quarantine powers.

In addition to other quarantine powers now authorized by law, the commissioner, the state veterinarian, or any authorized employee of the state board of animal health are hereby authorized and empowered to quarantine any premises, area or enclosure on which swine are fed with garbage and no person shall move or allow to be moved any swine from any quarantined premises or areas except under conditions and requirements prescribed under rules and regulations promulgated by the commissioner. Quarantine notices and orders shall be served upon owners or persons having possession of swine in the manner now provided by law for quarantining premises on which diseased livestock are kept.

SOURCES: Codes, 1942, § 4575-209; Laws, 1970, ch. 264, § 9, eff July 1, 1970.

§ 69-11-15. Penalty.

Whoever violates this chapter shall be guilty of a misdemeanor and upon conviction in a court of competent jurisdiction shall be fined not less than Fifty Dollars ($50.00) nor more than Two Hundred Fifty Dollars ($250.00), and within the discretion of the court may also be imprisoned for a period not to exceed ninety (90) days. Any party violating the provisions of this law shall not be entitled to indemnity under the Cholera Indemnity Law of the State of Mississippi for any swine that have been found to have died from cholera during the period of such violation.

SOURCES: Codes, 1942, § 4575-213; Laws, 1970, ch. 264, § 13, eff July 1, 1970.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 13

Stock Laws, Estrays

Article 1. General Stock Law 69-13-1
Article 3. Livestock at Large on Federal or State Highways 69-13-101
Article 5. Highway Fencing Law 69-13-201
Article 7. Estrays 69-13-301

Article 1.

General Stock Law.

Sec.
69-13-1. General stock law.
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69-13-27. Owner may replevy animal.

§ 69-13-1. General stock law.

There is declared, created and now in existence a statewide stock law which embraces all of the territory of the State of Mississippi and which is declared to be uniform throughout the state, except as hereinafter provided. Any person or persons owning or having under control any livestock such as cattle, horses, mules, jacks, jennets, sheep, goats and hogs, shall not permit such livestock to run at large upon the open or unfenced lands of another person, except as herein expressly provided, but shall keep such livestock confined in a safe inclosure or upon lands belonging to such person. However, upon the petition of twenty percent of the qualified electors of any county of this state, outside of the municipalities thereof, the board of supervisors of such county shall call an election to be held within sixty days after the filing of such petition for the purpose of permitting the qualified electors of such county, outside of the municipalities, to vote upon the question whether or not the provisions of the statewide stock law shall remain in force in such county, outside of the municipalities thereof; and if a majority of the qualified electors of such county, outside of the municipalities thereof, voting in said election, shall vote to sustain the statewide stock law, then it shall remain in full force and effect in said county, but should a majority of the qualified electors of said county, outside of said municipalities, voting in said election, vote against the statewide stock law, then sixty days after said election the provisions thereof shall not apply to or be in force in said county, outside of the municipalities thereof, except in its application to hogs or swine, which shall not be permitted in any event to run at large in any county of this state.

In the event a county has heretofore elected to come out from under the stock law, no less than five years after such election, upon the petition of twenty percent of the qualified electors of any such county outside the municipalities thereof, the board of supervisors shall call an election to be held within sixty days after the filing of such petition to vote upon the question of whether or not the provisions of the statewide stock law shall apply in that county outside the municipalities. If a majority of the qualified electors of such county, outside of the municipalities thereof, voting in said election, shall favor the statewide stock law, then sixty days after said election the provisions of the statewide stock law shall apply in that county outside the municipalities. If the majority of those voting in the election vote against the statewide stock law, the provisions of the statewide stock law shall continue to be inapplicable to such county outside municipalities. No election on the same question may be held more often than once every two years.

SOURCES: Codes, 1930, § 5441; 1942, § 4864; Laws, 1926, ch. 263; Laws, 1931, ch. 23; Laws, 1968, ch. 243, § 1, eff from and after passage (approved August 7, 1968).

Cross References — Authority of municipalities to regulate running at large of large animals, see § 21-19-9.

Livestock at large on federal or state highways, see §§ 69-13-101 et seq.

Laws concerning estrays, see §§ 69-13-301 et seq.

JUDICIAL DECISIONS

1. In general.

Where the statewide stock law is in full force, the owner of livestock is required to keep them under a safe enclosure of his own, without regard to whether or not other land owners in the stock law district have a sufficient fence, or any fence at all, around their crops. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459 (1957).

In a stockowner's replevin action wherein defendant cross claimed for damages for trespass, the plaintiff was liable for such damages as the defendant could prove within a reasonable degree of certainty as resulting to his fences, pasture or oat crop by reason of the running of the plaintiff's cattle, and the disturbing of the defendant's cattle in the execution of the writ of replevin. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459 (1957).

Neither this section nor Code 1942, § 4871, was enacted for the purpose of protecting motorists upon the public highways from personal injury or property damage caused by collision with domestic animals straying onto the highway, but for the purpose of protecting agricultural crops in stock law areas from the ravages of straying livestock. Pennyan v. Alexander, 229 Miss. 704, 91 So. 2d 728, 59 A.L.R.2d 1321 (1957).

It is enough that the presence and actions of dogs and chickens create nuisance, and it is immaterial that such are not included with the terms of this section. White v. Lewis, 213 Miss. 686, 57 So. 2d 497 (1952).

It is within the constitutional power of the legislature to enact laws so as to prevent animals from running at large, and to require them to be confined within safe inclosures. Bonnett v. Brown, 155 Miss. 833, 125 So. 427 (1930).

In an action against railroad company for killing a mule where the company's liability was questioned by the jury, a stock ordinance in force in the city has no application to defendant's liability. O'Kelly v. Yazoo & Miss. V.R. Co., 94 Miss. 635, 47 So. 660 (1908).

ATTORNEY GENERAL OPINIONS

Section 69-13-1 of the general stock laws mandates that all livestock owners "keep such livestock confined in a safe inclosure or upon lands belonging to such person." The presence of a cattle gap does not serve to legally create an "open range" or remove this obligation. Caldwell, August 9, 1996, A.G. Op. #96-0425.

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. 2d, Animals §§ 92-95 et seq.

2 Am. Jur. Legal Forms 2d, Animals § 20:237 (contract — development of dairy herd).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 41 et seq. (animals running at large or trespassing).

CJS. 3B C.J.S., Animals §§ 200, 211 et seq.

§ 69-13-3. Election; ballots.

The board of supervisors shall provide for the holding of elections under the provisions of this article in the same manner as now provided by law for holding special elections in the county and the ballots for such election shall have written or printed upon them the following:

"For State-Wide Stock Law ________
Against State-Wide Stock Law ________ "

But the result of said election in any county shall in no wise affect the operation of the state-wide stock law in so far as it relates to hogs. When an election has been held in any county, then no other election shall be held in that county within twelve months.

SOURCES: Codes, 1942, § 4866; Laws, 1931, ch. 23.

§ 69-13-5. Counties; excepted.

The provisions of this article as to holding elections as provided in Section 69-13-1, shall not apply in any county where or in which more than one-fourth of the total number of acres of land in such county, according to the federal farm census of 1930, are in actual cultivation, that is to say that in all counties in the state in which one-fourth of the land is in cultivation, according to the federal farm census of 1930, the provisions of the state-wide stock law shall be and remain in full force and effect.

SOURCES: Codes, 1942, § 4867; Laws, 1931, ch. 23.

§ 69-13-7. Fences.

If two or more adjoining counties shall at an election called pursuant to Section 69-13-1, vote against the state-wide stock law, then in such case, no fence or other barrier along the boundary lines of such county shall be necessary. However, in the event that two or more counties shall at such an election vote against the state-wide stock law, but an adjoining county or counties shall elect to remain under the provisions of the state-wide stock law, then the county or counties voting against the state-wide stock law shall, at its or their own proper cost and expense, before the provisions hereof shall become effective in such county or counties, build and erect and maintain along the line or lines of such counties a good and substantial fence or other sufficient barrier to prevent the intrusion of all such livestock mentioned in Section 69-13-1 as are permitted by the provisions of said section in such county or counties voting against the state-wide stock law, over, on, and upon the territory of the county or counties remaining under the provisions of the state-wide stock law. The fence herein provided shall be a fence satisfactory to and prescribed by the board of animal health, but no cattle guard or other obstruction shall be constructed or placed on any state highway. However, any infested county must provide watchmen night and day at such points to prevent cattle from passing through the gap where county fences would cross state highways.

SOURCES: Codes, 1942, § 4865; Laws, 1931, ch. 23.

§ 69-13-9. Lawful fence in open range counties defined.

In open range counties all fences four feet high, in good repair, and substantially and closely built with rails, planks, pickets, hedges or other substantial material, or with wires or wires and plank are lawful fences; and lawful fences may be made by raising the ground into a ridge and erecting thereon a fence of rails, planks, pickets, hedges, wires, or planks and wires, or other substantial material so that the ridge and fence together be four feet high, and such material so used shall not be more than six inches apart.

SOURCES: Codes, 1942, § 4865-01; Laws, 1946, ch. 435, §§ 1, 2.

§ 69-13-11. Stock law districts in counties with sea walls.

In counties in the State of Mississippi wherein sea walls or similar structures are constructed and maintained by the county, and in which there are two or more municipalities, each of which have ten thousand inhabitants or more, the board of supervisors in such counties may, by ordinance, create a stock law district of such area adjoining such sea wall or structure as such board may determine and adjudicate, not to extend more than one mile from such sea wall. The ordinance which may be so adopted by the board of supervisors creating such a stock law district may prohibit live stock such as cattle, horses, mules, jacks, jennets, sheep, goats, or hogs, running at large within the territory so designated as the stock law district, and such ordinance so adopted by the board of supervisors shall provide the method in which such stock law may be enforced in said district, and the penalty for the violation thereof, shall be in accordance with the provisions of the general statewide stock law.

The board of supervisors is hereby authorized and empowered to accept donations, grants or gifts from any private individual, corporation or organization, for the purpose of building and constructing fence or fences as necessary to protect such area.

SOURCES: Codes, 1942, § 4869; Laws, 1938, ch. 291.

§ 69-13-13. Tick reinfestation.

If any county in the State of Mississippi by vote comes from under the provisions of the present state-wide stock law, and said county thereafter becomes tick infested, all expenditures in connection with the tick eradication in said county or tick infested area or areas, must be paid from the funds of said county, except the salary and expenses of the state officers and agents. Furthermore, any county that comes from under the state-wide stock law under the provisions of Sections 69-13-1 through 69-13-27 and becomes infested with the Texas fever tick, the same shall, on complaint of the board of animal health, go back under the provisions of the state-wide stock law.

SOURCES: Codes, 1942, § 4868; Laws, 1931, ch. 23.

Cross References — Board of Animal Health, see §§ 69-15-2 et seq.

Authorization of board of supervisors to assist in eradicating tick fever, see § 69-15-307.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 94 et seq.

§ 69-13-15. Stock taken up; what done.

Any livestock as referred to in Section 69-13-1, found running at large upon the lands of any other person than the owner or custodian of such stock, may be taken up by any sheriff, constable, marshal, or other peace officer of the state within his territorial jurisdiction, and confined within a safe enclosure. If such animal, or animals, taken up be infested with, or exposed to Texas fever tick, they may be dipped by such officers, or persons, having such animal, or animals, so confined, until said livestock are free from infestation, and said dipping shall be under the rules and regulations prescribed by the board of animal health as near as possible. And the charges for so taking up and confining, together with any damage done by said stock, if any, shall be a special, first and paramount lien upon said livestock, and unless same are paid by the owner, or persons having such livestock under his control, when so notified, such livestock shall be sold as estrays, and the cost of taking up and confining, and damages, if any, together with other costs and expenses, shall first be deducted, and the balance, if any, shall be paid to the owner, or person having such livestock under his control, and the officer, or person, taking up such livestock, in addition to all other charges as now allowed by law, shall receive 50 cents per head for each dipping of each animal infested with or exposed to fever tick.

SOURCES: Codes, 1930, § 5442; 1942, § 4870; Laws, 1926, ch. 263.

Cross References — Authority of municipalities to regulate running at large of large animals, see § 21-19-9.

Estrays, generally, see §§ 69-13-301 et seq.

JUDICIAL DECISIONS

1. In general.

The owner of lands was entitled to equitable relief by way of permanent injunction against the repeated and continuous trespassing of defendant's stock roaming at large and was not relegated to the statutory remedy of taking up the stock and making a charge therefor; such remedy was wholly inadequate to protect her against such repeated and continuous trespasses, notwithstanding an alleged custom established in the neighborhood of permitting stock to roam at large on the open range. Rosenblatt v. Escher, 184 Miss. 274, 185 So. 551 (1939).

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. 2d, Animals §§ 92-95 et seq.

2 Am. Jur. Legal Forms 2d, Animals, §§ 20:251 et seq. (trespassing animals).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 41 et seq. (animals running at large or trespassing).

CJS. 3B C.J.S., Animals §§ 200, 211 et seq.

§ 69-13-17. Any person may take up stock.

Any such livestock as referred to in Section 69-13-1 may be taken up and confined by any person upon whose land such animal, or animals, may have entered or may be found, such person not having consented for the animal, or animals, to run at large on such land, and when so taken up shall be dealt with as estrays. For taking up any animal the person so taking the animal up shall be allowed Ten Dollars ($10.00) per head for each animal so taken up, but in no case shall he be entitled to receive more than Fifty Dollars ($50.00) for stock taken up at any one time. He may also receive reasonable compensation for feeding and caring for such animals while keeping them.

SOURCES: Codes, 1857, ch. 16, art. 16; 1871, § 1922; 1880, § 985; 1892, §§ 2046, 2047; 1906, §§ 2225, 2226; Hemingway's 1917, §§ 4544, 4545; 1930, § 5444; 1942, § 4872; Laws, 1978, ch. 372, § 1, eff from and after July 1, 1978.

Cross References — Estrays, generally, see §§ 69-13-301 et seq.

JUDICIAL DECISIONS

1. In general.

In replevin action to recover cattle which had been taken up by defendant for straying onto his land, wherein defendant made cross-demand for damages to oat crop and land, and for taking up, caring and feeding the cattle, allowance of double damages for taking up, caring and feeding the cattle was erroneous. Calcote v. May, 207 Miss. 547, 42 So. 2d 742 (1949).

§ 69-13-19. Owner liable for damages.

Every owner of livestock referred to in Section 69-13-1 shall be liable for damages for all injuries and trespasses committed by such animals by breaking and entering into or upon the lands, grounds, or premises of another person; and the person injured shall have a lien upon the animal, or animals, trespassing for all such damage. The damages for such trespass shall not be less than Ten Dollars ($10.00) for each horse, cow or hog, and Five Dollars ($5.00) for each of the other kinds of stock; and for every succeeding offense, after the owner has been notified of the first trespass or injury, double damages shall be recovered with costs. For breaking or entering into a pasture or waste ground, however, double damage shall not be recoverable, and the damages in such cases may be assessed as low as Eight Dollars ($8.00) for each horse, cow or hog and Two Dollars ($2.00) for each of the other kinds of livestock.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 6 (1); 1857, ch. 16, art. 15; 1871, § 1921; 1880, § 984; 1892, §§ 2043, 2044, 2045; 1906, §§ 2222, 2223, 2224; Hemingway's 1917, §§ 4541, 4542, 4543; 1930, § 5443; 1942, § 4871; Laws, 1978, ch. 376, § 1, eff from and after July 1, 1978.

JUDICIAL DECISIONS

1. In general.
2. Roadways.

1. In general.

The statutory guide to damages set forth in § 69-13-19 for loss of crops as a result of trespass of livestock is not the maximum amount of damages allowed but it is the minimum. Stephens v. Brock, 568 So. 2d 702 (Miss. 1990).

Where defendant cross claimed for damages for trespass in a stockowner's replevin action, the stockowner was liable for such damages as the defendant could prove within a reasonable degree of certainty as resulting to his fences, pasture or oat crop by reason of the running of the plaintiff's cattle, and the disturbing of the defendant's cattle in the execution of the writ of replevin. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459 (1957).

In a stock owner's replevin action wherein defendant counterclaimed for damages caused by trespassing, an instruction which might have misled the jury to believe that they were authorized to assess the plaintiff with the value of his own cattle in addition to, and as a part of, the allowance to defendant of damages, was error, since defendants were only entitled to have their lien established against the cattle for the amount of actual damages sustained by them by reason of the trespassing of the plaintiff's cattle upon their land, fences and crops, the amount of which should be proved with a reasonable degree of certainty as a proximate result of the fault of the plaintiff. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459 (1957).

In a stock owner's replevin action wherein landowner counterclaimed for damages caused by the trespassing cattle, the landowner was not entitled to any damage caused after the stock owner offered to remove his cattle and was prevented by the landowner from doing so, or refrained from doing so because of the strenuous objection of the landowner. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459 (1957).

Double damages were not allowable under this section where stockowner's cattle had entered upon and grazed upon a portion of an oat field which was planted for and used only as a pasture for cattle belonging to landowner and others, and an instruction, authorizing the assessment of such damages if the jury found there had been, to the knowledge of the stockowner, former trespasses, was erroneous. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459 (1957).

The liability of owner of livestock trespassing upon the lands of another in a stock law district for the actual damages caused by the trespassing cattle is absolute. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459 (1957).

In replevin action to recover cattle which defendant had taken up when they strayed onto his land, wherein defendant made a cross-demand for damages to oat crop and land, and for taking up, caring and feeding the cattle, charges for taking up the cattle and their care and feeding are not subject to double damages. Calcote v. May, 207 Miss. 547, 42 So. 2d 742 (1949).

Owner of trespassing stock is absolutely liable for damages done by them to the crops of others and questions of due care and negligence in confining stock are eliminated. Minor v. Dockery, 125 Miss. 727, 88 So. 321 (1921).

It was reversible error to instruct the jury that before plaintiff can recover, the hogs of defendant must have done all the damage sued for. Merrill v. Dockery, 124 Miss. 41, 86 So. 709 (1921).

The common law which requires the owner of stock to keep them from trespassing upon the land of others has no application here; but the whole subject is under the control and power of the legislature and it may, without violating any legal rights, require an owner to so confine his stock as to keep them off the land of others. Anderson v. Locke, 64 Miss. 283, 1 So. 251 (1887).

If an act of legislature against stock running at large authorize stock trespassing to be taken up and carried to the nearest justice of the peace, to be sold by him after due notice given, the fact that the justice, in any given case is father-in-law of the party on whose land the cattle have been trespassing does not render him incompetent to perform such act, since it is not judicial in its character. Anderson v. Locke, 64 Miss. 283, 1 So. 251 (1887).

If one allow the stock of a stranger to mingle with his own and trespass on another, he is "owner" pro hac vice, and liable for the damages done by all the stock. Montgomery v. Handy, 62 Miss. 16 (1884).

The common inclosure remains until one party has entirely segregated his lands from the others by a lawful fence. Montgomery v. Handy, 62 Miss. 16 (1884).

To constitute a common inclosure, the fence surrounding it need not be a lawful fence. Montgomery v. Handy, 62 Miss. 16 (1884).

2. Roadways.

Neither Code 1942, § 4864, nor this section was enacted for the purpose of protecting motorists upon the public highways from personal injury or property damage caused by collision with domestic animals straying onto the highway, but for the purpose of protecting agricultural crops in stock law areas from the ravages of straying livestock. Pennyan v. Alexander, 229 Miss. 704, 91 So. 2d 728, 59 A.L.R.2d 1321 (1957).

RESEARCH REFERENCES

ALR. Landlord's liability to third person for injury resulting from attack by dangerous or vicious animal kept by tenant. 81 A.L.R.3d 638.

Liability for personal injury or death caused by trespassing or intruding livestock. 49 A.L.R.4th 710.

CJS. 3B C.J.S., Animals §§ 328 et seq.

§ 69-13-21. How lien enforced.

The person taking up an animal trespassing, after two days may begin his action to recover damages and charges and to enforce his lien, by filing a bill of particulars of his damages, together with a description of the animal on which the lien is claimed, with a justice of the peace, if his claim does not exceed two hundred dollars; and the justice shall issue a summons for the owner or person entitled to the custody, returnable instanter at such place as he shall designate; and if the animal be not in the custody of the plaintiff, the justice may issue a writ commanding the officer to seize the animal. The summons being executed and returned, the justice shall proceed as in other suits. If the justice finds in favor of the plaintiff, he will assess the damages and charges and enter judgment accordingly, and direct the animal to be sold to satisfy the judgment; and if the animal be not in custody of the plaintiff or officer the order for sale may embrace a command to levy upon it.

SOURCES: Codes, 1880, § 985; 1892, § 2049; 1906, § 2228; Hemingway's 1917, § 4547; 1930, § 5445; 1942, § 4873.

Cross References — Liens, generally, see §§ 85-7-1 et seq.
Remedy to enforce liens, generally, see § 85-7-31.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Legal Forms 2d, Animals, §§ 20:201 et seq. (trespassing animals).

§ 69-13-23. Appeal to circuit court.

The party against whom judgment may be given in a case to enforce a lien pursuant to Section 69-13-21 may appeal to the circuit court as other cases.

SOURCES: Codes, 1880, § 987; 1892, § 2050; 1906, § 2229: Hemingway's 1917, § 4548; 1930, § 5446; 1942, § 4874.

Cross References — Appeals from justices of the peace in civil cases, generally, see § 11-51-85.

§ 69-13-25. Case brought in circuit court to enforce lien where over two hundred dollars claimed.

If the amount claimed for the damages by animals trespassing exceed two hundred dollars, the plaintiff will proceed by petition in the circuit court, wherein the proceedings shall be according to the practice of that court; and the clerk shall perform the ministerial duties prescribed for justices of the peace in cases before them.

SOURCES: Codes, 1892, § 2051; 1906, § 2230; Hemingway's 1917, § 4549; 1930, § 5447; 1942, § 4875.

Cross References — Practice in circuit court, see §§ 9-7-3 et seq.

§ 69-13-27. Owner may replevy animal.

The owner of the animal, or person entitled to the custody, may, after suit is brought and before final judgment, replevy the animal by giving bond, with sufficient sureties, to be approved by the justice of the peace, clerk, constable, or sheriff, in double the value thereof; and thereafter the suit shall proceed and the bond be in the place of the animal, and judgment may be rendered against the obligors therein.

SOURCES: Codes, 1880, § 986; 1892, § 2052; 1906, § 2231; Hemingway's 1917, § 4550; 1930, § 5448; 1942, § 4876.

JUDICIAL DECISIONS

1. In general.

In a stockowner's replevin action wherein defendant cross-claimed for damages for trespass, the plaintiff was liable for such damages as the defendant could prove within a reasonable degree of certainty as resulting to his fences, pasture or oat crop by reason of the running of the plaintiff's cattle, and the disturbing of the defendant's cattle in the execution of the writ of replevin. Galloway v. Brown, 230 Miss. 471, 93 So. 2d 459 (1957).

The surety, although he may in a proper case assert nonliability thereunder by contesting his original liability or asserting discharge, is not properly a party to the action of replevin, and must cede to his principal the responsibility of a defense upon the merits. Calcote v. May, 207 Miss. 547, 42 So. 2d 742 (1949).

Surety on possessory bond in replevin suit under this section may not draw upon either the forbearance of the defendant or the neglect of the plaintiff to avoid a liability upon the bond which was evidently satisfactory to both. Calcote v. May, 207 Miss. 547, 42 So. 2d 742 (1949).

Surety on replevin bond could not contend that no judgment could be allowed against him because the bond was ineffectual on the ground that statute required at least two individual sureties. Calcote v. May, 207 Miss. 547, 42 So. 2d 742 (1949).

Surety on replevin bond is not entitled to notice of the fact of loss of the replevin bond and proceedings for its substitution or re-establishment under §§ 766, 767, Code of 1942. Calcote v. May, 207 Miss. 547, 42 So. 2d 742 (1949).

ARTICLE 3.

LIVESTOCK AT LARGE ON FEDERAL OR STATE HIGHWAYS.

Sec.
69-13-101. Unlawful for livestock to roam at large on federal or state designated highways.
69-13-103. Responsibility of commissioner of public safety for impounding of livestock; authority of supervisors.
69-13-105. Charges against impounded livestock.
69-13-107. Highway safety patrol to provide equipment or contract with private individuals to remove livestock.
69-13-109. Description of impounded livestock to be published; form; notice of sale.
69-13-111. Owners of livestock roaming at large liable for damages.
69-13-113. State or county not liable for injury to impounded livestock.
69-13-115. Penalty for removal of impounded livestock without paying fees.
69-13-117. Nature and construction of article.

§ 69-13-101. Unlawful for livestock to roam at large on federal or state designated highways.

It shall be and is hereby declared unlawful for any livestock to roam at large on the federal or state designated paved highways or highway rights-of-way of the State of Mississippi, except, however, that in those counties that have heretofore voted to come out from under the statewide stock law this shall only apply to U.S. designated highways, Mississippi Highway 55, and all paved Mississippi highways where said highways traverse more than one (1) county and connect directly with another paved highway in another state being extensively traveled by citizens of other states, and the rights-of-way thereof; and except also that this section shall not apply to any such highway or highway right-of-way or any type of highway or road located on any levee maintained by the Board of Mississippi Levee Commissioners or the board of levee commissioners for the Yazoo-Mississippi Delta through maintenance contracts calling for or permitting pasturage of livestock on levee rights-of-way.

SOURCES: Codes, 1942, § 4876-01; Laws, 1956, ch. 140, § 1; Laws, 1958, ch. 463, § 1; Laws, 1979, ch. 331, eff from and after passage (approved March 1, 1979).

RESEARCH REFERENCES

ALR. Liability for damage to motor vehicle or injury to person riding therein from collision with runaway horse, or horse left unattended or untied in street. 49 A.L.R.4th 653.

Liability for personal injury or death caused by trespassing or intruding livestock. 49 A.L.R.4th 710.

Am Jur. 4 Am. Jur. 2d, Animals §§ 92-95 et seq.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 41 et seq. (animals running at large or trespassing).

CJS. 3B C.J.S., Animals §§ 211 et seq.

§ 69-13-103. Responsibility of commissioner of public safety for impounding of livestock; authority of supervisors.

The commissioner of public safety shall be placed in charge of and be responsible for the taking up and impounding of livestock found on the highways or highway right-of-ways described in Section 69-13-101. The commissioner of public safety is authorized, in his discretion, to secure the services of any person or persons residing in the respective counties of the state where he deems it necessary or advisable, other than an elected county officer, who shall assist the highway safety patrol in taking up such loose livestock and impounding the same in a private enclosure, which the private individual provides, without any cost to the state, such an individual being paid solely from the fees and assessments hereinafter provided against any such livestock. The commissioner of public safety, in the alternative, may require that such livestock be impounded in an enclosure, in the event the board of supervisors of that county has provided such an enclosure for that purpose.

A private individual hired by the commissioner of public safety to pick up loose livestock may not pick up such livestock off the highways and highway right-of-ways unless a state highway patrolman, or a sheriff or his deputy, or a constable, or some other law enforcement officer is present at the time such livestock is picked up.

The board of supervisors of each county within the State of Mississippi may, in its discretion, make provision for the care of animals so taken up and impounded under the provisions of this article and all county officers and law enforcement officers are directed to give full cooperation to the highway safety patrol in carrying out the provisions of this article.

SOURCES: Codes, 1942, § 4876-01; Laws, 1956, ch. 140, § 1; Laws, 1958, ch. 463, § 1.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 134 et seq.

§ 69-13-105. Charges against impounded livestock.

The fees, assessments, liens and charges against livestock picked up and impounded under Sections 69-13-101 and 69-13-103 are as follows:

(a) An assessment of Ten Dollars ($10.00) per head, which shall go to the private individual employed by the commissioner of public safety to perform such work.

(b) Two Dollars and Fifty Cents ($2.50) per head, which shall be an impoundment fee, One Dollar ($1.00) of which shall be forwarded, for each animal impounded, to the state treasurer, earmarked for the Mississippi Highway Safety Patrol, on the first day of each month, and the balance of One Dollar and Fifty Cents ($1.50) shall be deposited in the general county fund of the county in which the animal is impounded.

(c) There shall be an assessment of One Dollar and Fifty Cents ($1.50) per day, per head of impounded livestock, such assessment to be deposited in the general county fund to pay for the cost of feeding and caring for such livestock, if the livestock is impounded in a county-owned and operated enclosure, but if the animal is impounded in a private enclosure provided by the private individual employed by the commissioner of public safety, such fee shall be paid to that individual.

(d) Any incidental costs, such as securing the services of a veterinarian, a milker or other necessary incidental expenses.

All the above assessments, fees and costs shall be and are hereby made a first and paramount lien upon such animals until same are paid in full, and upon the sale of the livestock, as provided in this article, all such assessments shall be withheld and taken from the proceeds of the sale and paid to the proper person, officer or fund as set forth above prior to the payment of any amount to the original owner of the animal.

SOURCES: Codes, 1942, § 4876-01; Laws, 1956, ch. 140, § 1; Laws, 1958, ch. 463, § 1; Laws, 1973, ch. 321, § 1, eff from and after passage (approved March 14, 1973).

Cross References — Liens, generally, see §§ 85-7-1 et seq.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 134 et seq.

§ 69-13-107. Highway safety patrol to provide equipment or contract with private individuals to remove livestock.

The Mississippi Highway Safety Patrol shall, in the alternative:

(a) Provide necessary equipment to remove such livestock from the highways and shall impound all livestock found on all highways as provided in this article, or

(b) Contract for and obtain the services of private individuals to remove such livestock from the highways and impound the same in the private pen or enclosures provided by such private individuals, in accordance with the provisions of this article.

SOURCES: Codes, 1942, § 4876.03; Laws, 1956, ch. 140, § 3; Laws, 1958, ch. 463, § 2.

§ 69-13-109. Description of impounded livestock to be published; form; notice of sale.

When any livestock shall have been taken up and impounded in the enclosure to be provided by the board of supervisors, the sheriff of said county or counties shall be responsible for having the descriptions of all such livestock published in one weekly newspaper with general circulation in that part of the county where livestock was taken up. Such notice shall be in substantially the following form:

"To Whom It May Concern:

You are hereby notified that the following described livestock (giving full and accurate description of same, including marks and brands) is now impounded at (giving location where livestock is impounded) ________ and the amount due by reason of such impounding is $ ____ dollars per day. The above described livestock will, unless redeemed within five (5) days from date hereof, be offered for sale at public auction to the highest and best bidder for cash.

________ ________________________________

Date Sheriff of ________ County, Mississippi"

Unless the impounded livestock is redeemed within five days from date of notice, the sheriff shall forthwith give notice of sale thereof which shall be held not less than five days nor more than twelve days (excluding Sundays and holidays) from the first publication of the notice of sale. Said notice of sale shall be published in a newspaper of general circulation in the said county (excluding Sundays and holidays) and by posting a copy of such notice at the court house door. If there be no such newspaper then by posting such copy at the court house door and at two other conspicuous places in said county.

Such notice of sale shall be in substantially the following form:

"(Name of owner, if known, otherwise 'To Whom It May Concern') you are hereby notified that I will offer for sale and sell at public sale to the highest and best bidder for cash the following described livestock (giving full and accurate description of each head of livestock) at ________ o'clock, ____ .M. (the hour of sale to be between 11 o'clock A.M. and 2 o'clock P.M. Central Standard Time) on the ________ day of ________ at the following place: ________ (which place shall be where the livestock is impounded or at the place provided by the county commissioners for the taking up and keeping of such livestock) to satisfy a claim in the sum of ________ for fees, expenses for feeding and care and costs hereof.

________ ____

Date Sheriff of ________ County, Mississippi"

If the rightful owners shall claim the impounded animals, they may do so by paying all assessments or liens as herein provided, after signing for them on forms provided by the commissioner of public safety, such forms to include the descriptions of said animals. All receipts shall be deposited in a special fund known as the "Sheriff's Livestock Sale Fund." If it is later determined who the rightful owners are, the sheriff may have refunded to them the selling price after all liens are paid. Any funds accrued in this account shall, on June first of each year, be transferred to the general county fund.

SOURCES: Codes, 1942, § 4876-02; Laws, 1956, ch. 140, § 2, eff from and after six months after passage (approved April 5, 1956).

§ 69-13-111. Owners of livestock roaming at large liable for damages.

The owners of livestock which through their owner's negligence are found on federal or state designated paved highways or highway rights-of-way shall be subject to any damages as a result of wrecks, loss of life or bodily injury as a result of said livestock being on the above designated highways. The burden shall be on the owner of any such livestock to prove lack of negligence. This section shall not be applicable to any such highway or highway right-of-way or any type of highway or road located on any levee maintained by the Board of Mississippi Levee Commissioners or the board of levee commissioners for the Yazoo-Mississippi Delta through maintenance contracts calling for or permitting pasturage of livestock on levee rights-of-way.

SOURCES: Codes, 1942, § 4876-05; Laws, 1956, ch. 140, § 5; Laws, 1979, ch. 330, eff from and after passage (approved March 1, 1979).

JUDICIAL DECISIONS

1. In general.
2. Applicability.
3. Lack of negligence.

1. In general.

The language of § 69-13-111 stating that the "burden shall be on the owner of any such livestock to prove lack of negligence" applies to both the act and proximate cause elements of a negligence claim, so that the statute creates a presumption that the owner of stray livestock is negligent in his or her confinement of the animal, and also creates a presumption of proximate causation; the presumption does not create a case of absolute liability, but simply makes a prima facie case of negligence to the extent that the defendant is then called upon to meet it with an explanation. Carpenter v. Nobile, 620 So. 2d 961 (Miss. 1993).

In the absence of evidence of negligence in the maintenance of his fences on the part of the owner of a calf, he was not liable in damages to a motorist whose car collided with the animal on a public highway. Hartford Ins. Group v. Massey, 216 So. 2d 415 (Miss. 1968).

Proof by a truck owner that his vehicle was damaged as result of a collision between the truck and a bull belonging to defendants, and that the collision took place on a state-designated, paved highway established a prima facie case for liability under this section. Hagger v. Self, 254 Miss. 508, 183 So. 2d 175 (1966).

Evidence that a bull which damaged a truck on a public highway made its escape by pushing a four-strand barbed wire fence to the ground met the owners' burden that the escape of the animal had been without negligence on their part. Hagger v. Self, 254 Miss. 508, 183 So. 2d 175 (1966).

The owner of livestock straying onto highway and there causing damage has the burden of proving absence of negligence. National Dairy Prods. Corp. v. Jumper, 241 Miss. 339, 130 So. 2d 922 (1961).

2. Applicability.

In a case for damages arising from a collision between a driver and a bull, while the statute created a presumption of negligence against the owner of livestock involved in an accident on a highway, it did not necessarily preclude a finding of negligence against a keeper of an animal who exercised control over the animal. McMillan v. Rodriguez, 823 So. 2d 1173 (Miss. 2002).

This section did not apply to an accident involving a motor vehicle and a cow which occurred on a county road. Barrett v. Parker, 72 So. 2d 182 (Miss. 2000).

3. Lack of negligence.

In an action arising out of an accident involving the plaintiff's car and the defendant's bull, the court properly gave a peremptory instruction in favor of the defendant where the plaintiff presented no evidence demonstrating that the defendant was negligent in the construction or maintenance of the fence around the field from which the bull escaped and the defendant presented extensive evidence pertaining to the construction and maintenance of the fence. Harris v. Penn, 798 So. 2d 544 (Miss. Ct. App. 2001).

RESEARCH REFERENCES

ALR. Liability of owner or operator of vehicle for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway. 21 A.L.R.4th 159.

Liability for damage to motor vehicle or injury to person riding therein from collision with runaway horse, or horse left unattended or untied in street. 49 A.L.R.4th 653.

Liability for personal injury or death caused by trespassing or intruding livestock. 49 A.L.R.4th 710.

Am Jur. 1B Am. Jur. Pl & Pr Forms (Rev), Animals, Form 57.1 (complaint, petition, or declaration — cow on highway — violation of statute — damage to vehicle — loss of wages or profit).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Form 60.1, (answer — affirmative defense — suit by owner of damaged vehicle — negligence of plaintiff).

CJS. 3B C.J.S., Animals §§ 328 et seq.

§ 69-13-113. State or county not liable for injury to impounded livestock.

Neither the state nor any county shall be liable for any injury which may occur to livestock which is picked up and removed from the highways and highway right-of-ways and impounded, or which may be sold under the provisions of this article.

SOURCES: Codes, 1942, § 4876-03.5; Laws, 1958, ch. 463, § 3.

§ 69-13-115. Penalty for removal of impounded livestock without paying fees.

Any person who wrongfully removes impounded livestock from the enclosure provided by the board of supervisors under this article, without paying all fees and assessments against same, shall be guilty of a misdemeanor and, upon conviction, shall be punished as in other cases provided.

SOURCES: Codes, 1942, § 4876-04; Laws, 1956, ch. 140, § 4, eff from and after six months after passage (approved April 5, 1956).

§ 69-13-117. Nature and construction of article.

This article is cumulative and in addition to all other livestock laws and does not repeal any presently existing laws with reference to the powers and duties of the county ranger of the law on estrays. This article shall be liberally interpreted in order to accomplish its purpose and it shall not be interpreted to repeal any law unless specifically so provided herein.

SOURCES: Codes, 1942, § 4876-07; Laws, 1956, ch. 140, § 7, eff from and after six months after passage (approved April 5, 1956).

Article 5.

Highway Fencing Law.

Sec.	
69-13-201.	Title of article.
69-13-203.	Intent of article.
69-13-205.	Authority and duty of supervisors.
69-13-207.	Tax; authority of supervisors to levy.
69-13-209.	Tax; election; use of proceeds; authority of supervisors where tax not authorized.
69-13-211.	No reimbursement under Homestead Exemption Law.

§ 69-13-201. Title of article.

This article shall be known as the "Highway Fencing Law."

SOURCES: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

§ 69-13-203. Intent of article.

It is the intent of this article to vest the boards of supervisors of the several counties of the state with broad discretion and power of determining the location and types of fences and cattlegaps on the highways referred to in Section 69-13-205.

SOURCES: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

§ 69-13-205. Authority and duty of supervisors.

The respective boards of supervisors of the several counties of the state, in their discretion, are authorized and directed to erect, construct and maintain suitable fences and cattlegaps along the right of ways of United States Highways and state designated highways to prevent livestock from running at large as provided hereinafter. However, nothing in this article shall apply in any county coming under the state stock law.

The board of supervisors in any county having voted to come within the provisions of the statewide stock law, may maintain any fence or fences constructed under the authority of this article from any funds not public funds, donated by any person, firm or corporation for said purposes and further, may receive and accept funds from the Mississippi State Highway Commission for the relocation of said fence or fences required by said commission. In its discretion and in the alternative, said board may authorize any person, firm or corporation to maintain said fence or fences.

SOURCES: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

Editor's Note — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

RESEARCH REFERENCES

ALR. Liability of governmental entity for damage to motor vehicle or injury to person riding therein resulting from collision between vehicle and domestic animal at large in street or highway. 52 A.L.R.4th 1200.

§ 69-13-207. Tax; authority of supervisors to levy.

The boards of supervisors in said counties are hereby authorized and empowered in their discretion to levy a tax on the taxable property in said counties lying outside municipalities not exceeding two mills per annum thereon for the purpose of paying the cost of construction and maintenance of such fences and cattlegaps. In order to raise additional revenue for the purpose of paying the cost of construction and maintaining such fences and cattlegaps, the board of supervisors in those counties which have heretofore elected not to come under the statewide livestock law may in their discretion levy a tax against the owners of cattle permitted to roam at large in the amount of twenty-five cents (25¢) per head for cattle located in the respective counties in which an election has carried.

SOURCES: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

Cross References — Exemption of homestead from taxation, see §§ 27-33-1 et seq.

§ 69-13-209. Tax; election; use of proceeds; authority of supervisors where tax not authorized.

Before said board of supervisors is authorized to levy the aforesaid tax or erect such fences, it shall first be necessary that an election be held in each of such counties in accordance with the laws governing general election so far as possible to determine by majority vote of those voting in such election whether such tax shall be levied or such fences erected. And in said election only those electors outside the corporate limits of municipalities shall be eligible to vote. In the event the election is carried, such boards are authorized to construct such fences by use of convict labor, the funds derived from such tax, and with such aid as may be donated or contributed in material, labor or funds toward the erection of said fences and cattlegaps. In the event that the tax be not authorized at such election the board may nevertheless, in their discretion, erect such fences and cattlegaps by use of convict labor and such donations of labor, funds or materials as may be available, but shall not use public funds therefor.

In addition thereto, the counties bordering on the Gulf of Mexico now authorized by law to levy and collect a sea wall tax under Section 65-33-47, Mississippi Code of 1972, may use such proceeds of this tax as required to construct and maintain said fences and cattlegaps, but not to exceed one-half (½) mill of said sea wall tax.

SOURCES: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

§ 69-13-211. No reimbursement under Homestead Exemption Law.

No reimbursement shall be made under the Homestead Exemption Law of 1946 for any tax levy made under the provisions of this article.

SOURCES: Codes, 1942, § 4876.7; Laws, 1956, ch. 185, §§ 1-7; Laws, 1958, ch. 221, §§ 1-6.

Cross References — Homestead Exemption Law, see §§ 27-33-1 et seq.

ARTICLE 7.

ESTRAYS.

SEC.

69-13-301. Estrays to be taken up, posted, and ranger notified.
69-13-303. Appraisement and description of estrays.
69-13-305. Registering and advertising estrays.
69-13-307. Estray may be used by taker up.
69-13-309. Estray suitable for food slaughtered.
69-13-311. Death or escape of estrays reported.
69-13-313. Estrays to be sold if not claimed.
69-13-315. How owner may prove and reclaim.
69-13-317. Time allowed owner to claim and prove property.
69-13-319. Owner of estray sold entitled to net proceeds.
69-13-321. Ranger may seize estray not delivered according to law.
69-13-323. Date and amount of sale noted on register and paid to county treasurer.
69-13-325. Ranger's books open to inspection.
69-13-327. Ranger to administer oaths.
69-13-329. Authority of person other than county ranger as to estrays; fees.
69-13-331. Stallion suffered to run at large may be gelded.
69-13-333. Not lawful for drover to drive animals from range; penalty.
69-13-335. Penalty on ranger for failure of duty.
69-13-337. Penalty for violating the law as to estrays.
69-13-339. Impounding of livestock illegally roaming on state military reservation; lien; sale of unclaimed animals.

§ 69-13-301. Estrays to be taken up, posted, and ranger notified.

When a person shall find any horse, mule, jack, cattle, sheep, goat or hog straying upon his land, he may take up such animal, and, if the owner be known, he shall forthwith send the estray to the owner or notify him of the taking up of same. If the owner shall be unknown the person taking up such animal straying, shall forthwith post up a notice thereof, with a full description of the animal, in two public places in the supervisor's district, and at the courthouse door, for five days, at the expiration of which time, if an owner shall not have claimed the property and paid the charges allowed by law, he shall give information thereof to the ranger, or, if he reside more than ten miles distant, or if there should be no ranger, to a justice of the peace; and shall make oath before such justice or ranger that such animal was taken up straying at or on his farm or land, or the farm of which he has charge, and that the brands or marks of the animal have not been altered or defaced since the taking up.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 1 (1); 1857, ch. 32, art. 3; 1871, § 289; 1880, § 899; 1892, § 1715; 1906, § 1893; Hemingway's 1917, § 1541; 1930, § 5449; 1942, § 4877.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Fees for rangers, see § 25-7-41.

Dogs running at large, see § 41-53-11.

Livestock at large on federal or state highway, see §§ 69-13-101 et seq.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Legal Forms 2d, Animals, §§ 20:261 et seq. (estrays).

2 Am. Jur. Legal Forms 2d, Animals § 20:264 (notice — taking-up of estray animal).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 71 et seq. (estrays).

CJS. 3B C.J.S., Animals §§ 247 et seq.

§ 69-13-303. Appraisement and description of estrays.

On receiving notice of the taking up of an estray, the ranger or justice of the peace shall issue his summons to two disinterested and competent persons of the neighborhood who, first having been sworn to value and appraise the same truly, shall value and appraise such animal and certify the valuation under their hands, together with a particular description of the kind, marks, brand, stature, color, and age, which certificate shall be returned or transmitted to the ranger within ten days to be registered.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 1 (1); 1857, ch. 32, art. 3; 1871, § 289; 1880, § 899; 1892, § 1716; 1906, § 1894; Hemingway's 1917, § 1542; 1930, § 5450; 1942, § 4878.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Legal Forms 2d, Animals § 20:20:290 (certificate — of appraisers as to value of estray).

CJS. 3B C.J.S., Animals §§ 247 et seq.

§ 69-13-305. Registering and advertising estrays.

The ranger shall keep a book in which he shall register all certificates of estrays delivered or returned to him, and shall file the same in regular order; and without delay, on receipt of such certificate, he shall advertise the same, stating therein the name of the person by whom the estray was taken up and the description and marks thereof, and the amount of the appraisement. If the appraisement exceed twenty dollars, he shall publish the advertisement three weeks in the nearest newspaper; and if the appraisement be less than twenty dollars, such advertisement shall be put up in three public places in the county, one of which shall be at the courthouse door. He shall also make out a correct list of all estrays in his county, and put up the same at the door of the courthouse on the first day of each regular January and July meeting of the board of supervisors, stating therein such as have been proved away or sold, or have escaped or died.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 1 (3); 1857, ch. 32, art. 2; 1871, § 288; 1880, § 905; 1892, § 1717; 1906, § 1895; Hemingway's 1917, § 1543; 1930, § 5451; 1942, § 4879.

Cross References — Registration of brands, see § 69-21-101.

§ 69-13-307. Estray may be used by taker up.

Any person taking up estrays may retain possession thereof and use and employ the same in a proper and reasonable manner until claimed or sold according to law, without being liable to the owner thereof, and shall provide such estrays with sufficient wholesome sustenance; and if an animal so taken up die or accidentally get away, the taker up shall not be answerable for the same unless such death or escape be occasioned by ill treatment or neglect. Any person taking up and using an estray under the provisions of this section shall be liable for reasonable hire for the use thereof, to be fixed by the ranger, the same to be set off against the expense of keeping said estray.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 1 (9); 1857, ch. 32, art. 5; 1871, § 291; 1880, § 901; 1892, § 1719; 1906, § 1897; Hemingway's 1917, § 1545; 1930, § 5453; 1942, § 4881.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 251 et seq.

§ 69-13-309. Estray suitable for food slaughtered.

When an animal fit for food shall be taken up as an estray, and shall become troublesome, the person taking up the animal may have three disinterested citizens summoned by the ranger or a justice of the peace to appraise such estray, and he may kill the same, and pay the amount of the appraisement to the ranger or other person entitled to receive the same.

SOURCES: Codes, 1880, § 901; 1892, § 1721; 1906, § 1899; Hemingway's 1917, § 1547; 1930, § 5455; 1942, § 4883.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 69-13-311. Death or escape of estrays reported.

When any estray shall die or escape, the taker up shall, without delay, make report thereof to the ranger, on oath, who shall make a memorandum of the same on the margin of his book opposite the registry of the certificate of such estray.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 1 (4); 1857, ch. 32, art. 5; 1871, § 291; 1880, § 901; 1892, § 1720; 1906, § 1898; Hemingway's 1917, § 1546; 1930, § 5454; 1942, § 4882.

§ 69-13-313. Estrays to be sold if not claimed.

If the estray shall not be claimed and proved within the time allowed and before actual sale, the same shall be sold by the ranger at the courthouse door, for cash, after giving three weeks' notice of the time and place of sale by an advertisement put up in one of the most public places in each supervisor's district, one of which shall be at the courthouse door; and the sale may be made on the first Monday of any month, and between the hours of twelve and four o'clock of the day of the sale; and estray horses, mules, jacks, jennets, and colts over two years old, and work-oxen shall be delivered at the courthouse on the day of sale. All other estrays may be delivered on the premises of the taker up.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 1 (6, 11); 1857, ch. 32, art. 6; 1871, § 292; 1880, § 902; 1892, § 1723; 1906, § 1901; Hemingway's 1917, § 1549; 1930, § 5457; 1942, § 4885.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Legal Forms 2d, Animals, § 20:271 (notice and sale of estray by public official).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 83, 84 (order and notice of sale of estray).

CJS. 3B C.J.S., Animals § 256.

§ 69-13-315. How owner may prove and reclaim.

A person claiming to be the owner of any animal taken up as an estray and posted as herein provided, may make proof of his title by his oath, or otherwise, to the satisfaction of the ranger, who shall thereupon issue his order to the person having the estray in his custody, to deliver the same to such owner on payment of the lawful charges, to be ascertained and stated by the ranger.

SOURCES: Codes, 1857, ch. 32, art. 4; 1871, § 290; 1880, § 900; 1892, § 1718; 1906, § 1896; Hemingway's 1917, § 1544; 1930, § 5452; 1942, § 4880.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Legal Forms 2d, Animals, § 20:268 (notice by owner of intention to prove ownership).

§ 69-13-317. Time allowed owner to claim and prove property.

The owner of all estrays appraised at more than fifty dollars shall be allowed three months; the owners of estrays appraised at twenty dollars and not exceeding fifty dollars, shall be allowed two months; and the owner of estrays valued at less than twenty dollars shall be allowed one month from the date of the certificate of appraisement to claim and prove property to the same.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 1 (6); 1857, ch. 32, art. 6; 1871, § 292; 1880, § 902; 1892, § 1722; 1906, § 1900; Hemingway's 1917, § 1548; 1930, § 5456; 1942, § 4884.

§ 69-13-319. Owner of estray sold entitled to net proceeds.

The owner of any animal sold as an estray, may apply to the board of supervisors of the county within three years, and, upon proof of title, the said board shall order the net proceeds of the sale thereof to be refunded to him out of the county treasury.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 1 (7); 1857, ch. 32, art. 8; 1871, § 294; 1880, § 910; 1892, § 1729; 1906, § 1907; Hemingway's 1917, § 1555; 1930, § 5463; 1942, § 4891.

§ 69-13-321. Ranger may seize estray not delivered according to law.

The ranger may seize and sell any estray which shall not be delivered according to law, and shall be allowed for such seizure the same fees as a sheriff is entitled to for executing a writ of execution.

SOURCES: Codes, 1880, § 904; 1892, § 1725; 1906, § 1903; Hemingway's 1917, § 1551; 1930, § 5459; 1942, § 4887.

§ 69-13-323. Date and amount of sale noted on register and paid to county treasurer.

The ranger shall note the time and amount of sale in his register opposite the record of the certificate of such estray, and shall forthwith pay over to the depository of the county the net proceeds of such sale, after deducting all lawful charges; and it shall be his duty to make a full report in writing, under oath, to the board of supervisors, at each regular meeting in January and July, of the amount of money received by him on account of the sale of estrays, and a detailed statement of the disposition thereof.

SOURCES: Codes, 1857, ch. 32, art. 7; 1871, § 293; 1880, § 906; 1892, § 1726; 1906, § 1904; Hemingway's 1917, § 1552; 1930, § 5460; 1942, § 4888.

§ 69-13-325. Ranger's books open to inspection.

The books kept by the ranger for the registration of estrays shall be open to the inspection of every person free of charge; and, at the expiration of his office, shall be handed over to his successor; and, when filed, shall be deposited with the clerk of the chancery court of the county, who shall preserve them.

SOURCES: Codes, 1880, § 908; 1892, § 1728; 1906, § 1906; Hemingway's 1917, § 1554; 1930, § 5462; 1942, § 4890.

§ 69-13-327. Ranger to administer oaths.

The ranger is authorized to administer all oaths and take affidavits necessary in the discharge of his duties.

SOURCES: Codes, 1892, § 1732; 1906, § 1909; Hemingway's 1917, § 1557; 1930, § 5465; 1942, § 4893.

§ 69-13-329. Authority of person other than county ranger as to estrays; fees.

A justice of the peace, where there is a county ranger, shall not have authority to do any act concerning estrays, except to take the information from the taker up and to issue the summons for the appraisers; and he shall be entitled to the same fee for such service as the ranger, to be collected and paid over by the ranger; but if there be not a ranger, a justice of the peace may perform all the duties.

SOURCES: Codes, 1892, § 1730; 1906, § 1908; Hemingway's 1917, § 1556; 1930, § 5464; 1942, § 4892.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Fees for justice courts, see § 25-7-25.

Fees for rangers, see § 25-7-41.

§ 69-13-331. Stallion suffered to run at large may be gelded.

If any person shall suffer any stallion above the age of two years to run at large, out of an inclosure, it shall be lawful for any person to confine and geld such stallion, at the risk of the owner; but this section shall not apply to such stallions as are usually kept up, and happen to get out by accident.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 1 (14); 1857, ch. 32, art. 15; 1871, § 301; 1880, § 912; 1892, § 1734; 1906, § 1911; Hemingway's 1917, § 1559; 1930, § 5467; 1942, § 4895.

§ 69-13-333. Not lawful for drover to drive animals from range; penalty.

It shall not be lawful for a drover or other person to drive any horse, mule, cattle, hog, or sheep of another from the lands to which the same may belong, whether the same be an estray or not; but it shall be his duty, if any other such stock shall join his, immediately to halt at the nearest convenient place and separate such stock as does not belong to him or to the person for whom he may be employed; and if any person shall violate the provisions of this section, he shall forfeit twenty dollars for every offense, with costs, recoverable before a justice of the peace, by and for the use of any person who will sue for the same, and shall also be liable in damages to the party injured; and when any person employed in driving stock shall violate the provisions of this section, he and his employer shall be liable to the like penalties; but the recovery of such penalty shall not be a bar to indictment for larceny.

SOURCES: Codes, Hutchinson's 1848, ch. 12, art. 1 (12); 1857, ch. 32, art. 14; 1871, § 300; 1880, § 911; 1892, § 1733; 1906, § 1910; Hemingway's 1917, § 1558; 1930, § 5466; 1942, § 4894.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 69-13-335. Penalty on ranger for failure of duty.

For any failure of the ranger to make out and put up a correct list of all the estrays in his county, or to make his report to the board of supervisors as required, the board of supervisors may fine the ranger not less than five nor more than fifty dollars, which may be collected by scire facias and execution.

SOURCES: Codes, 1857, ch. 32, art. 9; 1871, § 295; 1880, § 907; 1892, § 1727; 1906, § 1905; Hemingway's 1917, § 1553; 1930, § 5461; 1942, § 4889.

§ 69-13-337. Penalty for violating the law as to estrays.

If any person shall take up any horse, mare, mule, jack, cattle, sheep, goat or hog as an estray, contrary to the provisions of this article; or if any person, having taken up such animal, shall fail to send it to or notify the owner, if known, or to give information to the ranger as required, or shall fail to perform any duty required of him, or shall abuse such animal, or shall use the same in an unreasonable or improper manner, so that damage shall be done to the owner, or the value of the animal be impaired; or if any person shall take or send away an estray out of this state, or shall trade, sell, or barter the same; or if any taker up shall fail to deliver said estray to the ranger at the courthouse on the day of the sale of said estray, such person shall, for every such offense, be punished as for a misdemeanor, and, in addition thereto, shall be liable to the owner for the value of the animal; and the taker up shall forfeit all compensation for taking up and keeping such estray.

SOURCES: **Codes, Hutchinson's 1848, ch. 12, art. 1 (10); 1857, ch. 32, art. 10; 1871, § 296; 1880, § 903; 1892, § 1724; 1906, § 1902; Hemingway's 1917, § 1550; 1930, § 5458; 1942, § 4886.**

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals § 291.

§ 69-13-339. Impounding of livestock illegally roaming on state military reservation; lien; sale of unclaimed animals.

(1) The Mississippi Military Department, acting through the training site supervisor at Camp Shelby, is hereby authorized and empowered to take up and impound in a proper enclosure all livestock found roaming at large upon any state-owned or leased lands comprising the state military reservation in Forrest and contiguous counties, in violation of the statewide stock law statutes.

(2) The training site supervisor shall provide a safe and secure enclosure in which such livestock shall be impounded, and will insure that such animals are cared for in a humane manner until removed for such enclosure as hereinafter provided. It shall be unlawful for any owner of livestock or any other person to remove such livestock without the authority of the training site supervisor, and such offense shall be deemed a misdemeanor.

(3) There is hereby created a statutory lien in the amount of the cost of impounding each animal, not to exceed Twenty-five Dollars ($25.00), against each head of cattle, horse or mule, and all other livestock so found upon and impounded upon the state military reservation; and in addition a lien of One Dollar and Fifty Cents ($1.50) per day shall accrue for the feeding and care of each animal so impounded. No animal shall be removed by its owner until the full lien is paid in cash to the training site supervisor, who shall give a receipt for such money paid and account for the same in the manner to be established by the military department. All funds collected under this section shall be forwarded to the adjutant general on or before the fifth day of each month, and such funds shall be expended under his supervision in carrying out the provisions of this section and in making improvements to the military reservation.

(4) The training site supervisor shall publish a monthly notice in one (1) newspaper having general circulation in Forrest County, the general description of the livestock impounded and held on the end of the preceding month, and said notice shall offer the lawful owners the opportunity to claim their livestock by a day and hour certain, but not less than ten (10) days, after paying the full statutory lien imposed. All animals not claimed by the designated date and hour may be sold as a herd to the highest bidder for cash within ten (10) days and a proper receipt shall be given the purchaser and the funds accounted for as provided for in the preceding subsection.

(5) This section is declared to be remedial legislation and is enacted for the purposes of protecting the personal and real property of the state military

reservation known as Camp Shelby from livestock illegally thereon, and enhancing the safety of members of the National Guard and other reserve military forces of Mississippi and other states which train and conduct military exercises and maneuvers on said lands; and neither the training site supervisor, nor any other public employee, shall be liable in any civil or criminal court in carrying out the provisions of this section. The purchasers of livestock under the provisions of this section shall receive a valid title, and such purchaser shall not be liable in a civil or criminal court to any person for any purchase made under this section.

SOURCES: Codes, 1942, § 4895.5; Laws, 1968, ch. 485; Laws, 1981, ch. 319, § 1, eff from and after July 1, 1981.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 15

Board of Animal Health; Livestock and Animal Diseases

Article 1. Mississippi Board of Animal Health 69-15-1
Article 2. Administrative Procedures to Enforce Rules and Regulations of Board of Animal Health 69-15-51
Article 3. General Provisions for Control and Eradication of Livestock and Animal Diseases 69-15-101
Article 5. Cattle Tuberculosis 69-15-201
Article 7. Eradication of Cattle Ticks and Other Animal Parasites 69-15-301
Article 9. Penalties 69-15-331

Article 1.

Mississippi Board of Animal Health.

Sec.
69-15-1. Repealed.
69-15-2. Membership of board; appointments; terms; vacancies; advisory council.
69-15-3. Office space; adoption of rules and regulations.
69-15-5. Compensation of members of board.
69-15-7. Employees; authority to employ professional, technical and clerical personnel; appointment of state veterinarian; bond; use of attorney.
69-15-9. Powers of Board, State Veterinarian, officers and agents; entry upon premises to inspect and disinfect; liability; control, prevention, eradication, inspection and monitoring of chronic wasting disease and other contagious diseases of exotic cervids or livestock.
69-15-11. Veterinary Diagnostic Laboratory; services of laboratory; fees for services; qualifications of director and staff; advisory council; meetings; funds and property transfer to College of Veterinary Medicine.
69-15-13. Appointment of federal personnel as inspectors; acceptance of federal assistance.
69-15-15. Quarantine for anthrax.
69-15-17. Repealed
69-15-19. Animal Care Fund.

§ 69-15-1. Repealed.

Repealed by Laws of 1998, ch. 570, § 8, eff from and after July 1, 1998.

[Codes, Hemingway's 1917, §§ 5490, 5491; 1930, §§ 5412, 5413; 1942, § 4835; Laws, 1908, ch. 106; Laws, 1919, ch. 227; Laws, 1926, ch. 264; Laws, 1944, ch. 246, §§ 1-3; Laws, 1948, ch. 198, §§ 1, 2 (subd. 1, 2); Laws, 1950, ch. 191 (subd. 2); Laws, 1956, ch. 137 (subd. 2); Laws, 1958, ch. 158; Laws, 1962, ch. 163; Laws, 1966, ch. 230; Laws, 1966, ch. 445, § 9; Laws, 1968, ch. 242, § 1; Laws, 1990, ch. 519, § 1]

Editor's Note — Former § 69-15-1 provided for membership of the Board of Animal Health, terms of office, and filling of vacancies. See, now, § 69-15-2.

§ 69-15-2. Membership of board; appointments; terms; vacancies; advisory council.

(1) The Mississippi Board of Animal Health is to be composed of the Commissioner of Agriculture and Commerce, the Dean of the College of Veterinary Medicine and the heads of the Animal and Dairy Science and Poultry Science Departments at Mississippi State University of Agriculture and Applied Science and one (1) person appointed by the President of Alcorn State University from its land grant staff as five (5) ex officio members with full voting rights, and eleven (11) other members of the board to be appointed by the Governor as hereinafter provided. The board shall select annually a chairman and vice chairman from any members of the board.

(2) The Governor, with the advice and consent of the Senate, shall appoint eleven (11) other members from the following groups or associations from a written list of recommendations from such groups or associations:

One (1) licensed and practicing veterinarian who holds a Doctor of Veterinary Medicine Degree, from a written list of three (3) recommendations submitted by the Mississippi State Veterinary Medical Association;

One (1) general farmer from a written list of three (3) recommendations submitted by the Mississippi Farm Bureau Federation;

One (1) poultry breeder and producer from a written list of three (3) recommendations submitted by the Mississippi Poultry Improvement Association;

One (1) sheep breeder and producer from a written list of three (3) recommendations submitted by the Mississippi Sheep Producers' Association;

One (1) beef cattle breeder and producer from a written list of three (3) recommendations submitted by the Mississippi Cattlemen's Association;

One (1) swine breeder and producer from a written list of three (3) recommendations submitted by the Mississippi Pork Producers' Association;

One (1) dairy breeder and producer from a written list of three (3) recommendations submitted by the American Dairy Association of Mississippi;

One (1) horse breeder and producer from a written list of four (4) recommendations, one (1) recommendation submitted by each of the following: the Mississippi Quarter Horse Association, Tennessee Walking Horse Association, Mississippi Cutting Horse Association and Mississippi State Equine Association. If an association fails to timely submit its recommendation, the Governor may appoint the member from the list of recommendations submitted by the other associations;

One (1) catfish breeder and producer from a written list of three (3) recommendations submitted by the Mississippi Catfish Association;

One (1) member of the Mississippi Independent Meat Packers' Association from a written list of three (3) recommendations submitted by the Mississippi Independent Meat Packers' Association;

One (1) member of the Mississippi Livestock Auction Association from a written list of three (3) recommendations submitted by the Mississippi Livestock Auction Association.

All members shall take and subscribe to the general oath of office as provided in Section 268, Mississippi Constitution of 1890, and file the same with the Commissioner of Agriculture and Commerce.

(3) Effective August 1, 1968, the dairy producer member shall be appointed for a one-year term; the Livestock Auction Association member shall be appointed for a two-year term; and the meat packer member shall be appointed for a three-year term; the catfish producer member shall be appointed for a four-year term; and the horse producer member shall be appointed for a five-year term.

Effective August 1, 1969, the poultry producer member shall be appointed for a two-year term; on August 1, 1970, the sheep producer member shall be appointed for a three-year term; on August 1, 1971, the swine producing member shall be appointed for a four-year term; on August 1, 1972, the general farmer member shall be appointed for a five-year term; on August 1, 1973, the veterinarian member shall be appointed for a six-year term; and on August 1, 1974, the beef cattle producer member shall be appointed for a seven-year term.

All subsequent appointments shall be for four-year terms, except for appointments to fill vacancies which shall be for the unexpired term only.

(4)(a) "Commissioner" means the Commissioner of Agriculture and Commerce.

(b) "Department" means the Department of Agriculture and Commerce.

(5) On or before July 1, 1998, the board shall appoint, from a written list of not less than three (3) licensed veterinarians submitted by the commissioner, the State Veterinarian.

(6) There is created an advisory council to advise the Board of Animal Health on matters concerning the board. The council shall be composed of the Chairman of the Senate Agriculture Committee, the Chairman of the House Agriculture Committee, and one (1) appointee of the Lieutenant Governor and one (1) appointee of the Speaker of the House of Representatives. The members of the advisory council shall serve in an advisory capacity only. For attending meetings of the council, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts provided for committee meetings when the Legislature is not in session; however, no per diem or expenses for attending meetings of the council shall be paid while the Legislature is in session. No per diem and expenses shall be paid except for attending meetings of the council without prior approval of the proper committee in their respective houses.

SOURCES: Laws, 1998, ch. 570, § 1; reenacted without change, Laws, 1999, ch. 509 § 1; reenacted without change, Laws, 2003, ch. 352, § 1; Laws, 2008, ch. 529, § 1, eff from and after passage (approved May 9, 2008.)

Editor's Note — Laws of 1999, ch. 509, § 8, provides:

"SECTION 8. Sections 69-15-2, 69-15-3, 69-15-7, 69-15-9, 69-15-11, 69-15-13 and 69-15-15, Mississippi Code of 1972, are repealed on July 1, 2003."

This section was reenacted without change by Laws, 2003, ch. 352, § 1, effective from and after July 1, 2003.

Cross References — Powers of Governor, generally, see § 7-1-5.
Powers of State Board of Animal Health, see § 69-15-301.
Penalties for violating any provision of this article, see § 69-15-331.

ATTORNEY GENERAL OPINIONS

There is no authority in the enabling legislation, Section 69-15-1 et seq., for the Board of Animal Health to send personnel to the County Fair to perform drug testing of horses for purposes of ensuring compliance with horse racing rules. Spell, February 16, 1996, A.G. Op. #96-0065.

The Mississippi Board of Animal Health can accept donations pursuant to Section 7-1-7. Watson, Feb. 24, 2006, A.G. Op. 06-0050.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 130 et seq.

§ 69-15-3. Office space; adoption of rules and regulations.

The Department of Finance and Administration shall provide office space at the seat of the government, as it deems necessary and requisite for the Board of Animal Health. The board shall adopt rules and regulations as it deems proper to carry out its statutory powers and duties. The rules and regulations shall also prescribe the dates and hours of meetings to be held every other month and provide that special meetings shall be called by the chairman at the request of the Commissioner of Agriculture and Commerce, on three (3) days' written notice or by a majority vote of the entire board on three (3) days' written notice.

SOURCES: Codes, Hemingway's 1917, §§ 5490, 5491; 1930, §§ 5412, 5413; 1942, § 4835; Laws, 1908, ch. 106; Laws, 1919, ch. 227; Laws, 1926, ch. 264; Laws, 1944, ch. 246, §§ 1-3; Laws, 1948, ch. 198, §§ 1, 2 (subd. 1, 2); Laws, 1950, ch. 191 (subd. 2); Laws, 1956, ch. 137 (subd. 2); Laws, 1958, ch. 158; Laws, 1962, ch. 163; Laws, 1966, ch. 230; Laws, 1966, ch. 445, § 9; Laws, 1968, ch. 242, § 1; Laws, 1998, ch. 570, § 2, eff from and after July 1, 1998; reenacted and amended, Laws, 1999, ch. 509, § 2; reenacted and amended, Laws, 2003, ch. 352, § 2, eff from and after July 1, 2003.

Editor's Note — Laws of 1999, ch. 509, § 8, provides:
"SECTION 8. Sections 69-15-2, 69-15-3, 69-15-7, 69-15-9, 69-15-11, 69-15-13 and 69-15-15, Mississippi Code of 1972, are repealed on July 1, 2003."
Cross References — Quarantine in event of anthrax, see § 69-15-15.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 130 et seq.

§ 69-15-5. Compensation of members of board.

The members of the Board of Animal Health who are not full-time public officers or public employees shall be entitled to a per diem as is provided by

Section 25-3-69, Mississippi Code of 1972, not to exceed twenty (20) days in any fiscal year. All members shall be entitled to mileage and actual and necessary expenses in attending such regular or special meetings, as provided by Section 25-3-41.

SOURCES: Codes, Hemingway's 1917, §§ 5490, 5491; 1930, §§ 5412, 5413; 1942, § 4835; Laws, 1908, ch. 106; Laws, 1919, ch. 227; Laws, 1926, ch. 264; Laws, 1944, ch. 246, §§ 1-3; Laws, 1948, ch. 198, §§ 1, 2 (subd. 1, 2); Laws, 1950, ch. 191 (subd. 2); Laws, 1956, ch. 137 (subd. 2); Laws, 1958, ch. 158; Laws, 1962, ch. 163; Laws, 1966, ch. 230; Laws, 1966, ch. 445, § 9; Laws, 1968, ch. 242, § 1; Laws, 1981, ch. 401, § 1; reenacted without change, Laws, 2003, ch. 352, § 3, eff from and after July 1, 2003.

ATTORNEY GENERAL OPINIONS

While Miss. Code Ann. Section 69-15-5 (1972) provides specific authority to reimburse members of the Mississippi Board of Animal Health for travel and mileage expenses, and that employees of the agency are entitled to travel expenses under Section 23-5-41 [Repealed], MBAH has no authority to pay travel expenses to volunteers, or to pay a volunteer for the expenses of running the volunteer's business or professional practice while attending Mississippi Animal Response Team training. Watson, Feb. 3, 2006, A.G. Op. 06-0005.

The Mississippi Board of Animal Health has no authority to pay travel expenses to volunteers, and there is no statutory authority for the agency to pay a volunteer for the expenses of running the volunteer's business or professional practice while attending Mississippi Animal Response Team training. Watson, Feb. 24, 2006, A.G. Op. 06-0050.

§ 69-15-7. Employees; authority to employ professional, technical and clerical personnel; appointment of state veterinarian; bond; use of attorney.

The State Veterinarian is authorized and empowered to employ the necessary professional, technical and clerical personnel as he deems necessary to carry out the powers and duties of the board, and to fix their compensation. The board shall appoint from a written list of not less than three (3) licensed veterinarians submitted by the Commissioner of Agriculture and Commerce, a duly licensed and practicing veterinarian as the State Veterinarian, who shall hold a Degree of Veterinary Medicine from a recognized college or university and shall have been engaged in the practice of veterinary science for not less than ten (10) years prior to his appointment. The State Veterinarian shall serve at the will and pleasure of the board and shall enter into a surety bond for the faithful performance of his duties, and the premium therefor shall be paid by the board. The board shall also be authorized to employ an attorney as authorized in Section 69-1-14, Mississippi Code of 1972.

SOURCES: Codes, Hemingway's 1917, §§ 5490, 5491; 1930, §§ 5412, 5413; 1942, § 4835; Laws, 1908, ch. 106; Laws, 1919, ch. 227; Laws, 1926, ch. 264; Laws, 1944, ch. 246, §§ 1-3; Laws, 1948, ch. 198, §§ 1, 2 (subd. 1, 2); Laws, 1950, ch. 191 (subd. 2); Laws, 1956, ch. 137 (subd. 2); Laws, 1958, ch. 158; Laws, 1962, ch. 163; Laws, 1966, ch. 230; Laws, 1966, ch. 445, § 9; Laws, 1968, ch. 242, § 1;

Laws, 1983, ch. 365, § 5; Laws, 1990, ch. 519, § 2; Laws, 1998, ch. 570, § 3, eff from and after July 1, 1998; reenacted without change, Laws, 1999, ch. 509, § 3; reenacted without change, Laws, 2003, ch. 352, § 4, eff from and after July 1, 2003.

Editor's Note — Laws of 1999, ch. 509, § 8, provides:

"SECTION 8. Sections 69-15-2, 69-15-3, 69-15-7, 69-15-9, 69-15-11, 69-15-13 and 69-15-15, Mississippi Code of 1972, are repealed on July 1, 2003."

This section was reenacted without change by Laws, 2003, ch. 352, § 4, effective from and after July 1, 2003.

§ 69-15-9. Powers of Board, State Veterinarian, officers and agents; entry upon premises to inspect and disinfect; liability; control, prevention, eradication, inspection and monitoring of chronic wasting disease and other contagious diseases of exotic cervids or livestock.

(1)(a) The Board of Animal Health shall have plenary power to deal with all contagious and infectious diseases of animals as in the opinion of the board may be prevented, controlled or eradicated, and with full power to make, promulgate and enforce such rules and regulations as in the judgment of the board may be necessary to control, eradicate and prevent the introduction and spread of anthrax, tuberculosis, hog cholera, Texas and splenic fever and the fever-carrying tick (margaropus annulatus), cattle brucellosis, anaplasmosis, infectious bovine rhinotracheitis, muscosal disease, cattle viral diarrhea, cattle scabies, sheep scabies, hog cholera, swine erysipelas, swine brucellosis, equine encephalomyelitis, rabies, vesicular diseases, salmonella group, newcastle disease, infectious laryngotracheitis, ornithosis-psittacosis, mycoplasma group, chronic wasting disease and any suspected new and/or foreign diseases of livestock and poultry and all other diseases of animals in this state, and the board is hereby vested with full authority to establish and maintain quarantine lines and to quarantine by county, supervisors district, parcel of land or herd. The State Veterinarian shall appoint as many inspectors and range riders as may be deemed necessary, and the funds at his disposal will permit, and shall delegate authority to said inspectors and range riders, to enter premises to inspect and disinfect livestock and premises, and enforce quarantine including counties, farms, pens, stables and other premises.

(b) No veterinarian may provide veterinary services for the control, eradication or prevention of diseases in animals at a stockyard, livestock auction, equine sale or other place or event of livestock trading unless he has first been approved by the board for this purpose. The board shall have the authority to adopt rules and regulations as may be necessary or desirable to carry out the purposes of this paragraph.

(2) No officer or agent of the State Veterinarian may enter the actual enclosures of any person except with the consent of the person lawfully in possession thereof or in the absence of such consent, with a proper writ obtained as in other cases of searches and seizures under constitutional law.

When such officers and agents are lawfully on the premises, either by permission or writ, they shall be authorized to inspect the premises and the livestock and animals found thereon by entering the enclosures and buildings and they are authorized to check livestock and poultry found therein for any contagious diseases and take proper action to control or eradicate any such diseases that may be found. While such officers and agents are performing their duties hereunder, they shall not be personally liable except for gross negligence. The refusal without lawful reason of any person to give the consent aforesaid shall be deemed a misdemeanor and shall be punishable as for violations of Article 5 of this chapter as provided for in Section 69-15-115.

The Board of Animal Health shall administer the special fund created in Section 69-15-19.

(3)(a) The Board of Animal Health shall have plenary power to control, prevent, eradicate, inspect and monitor chronic wasting disease or other contagious disease of exotic cervids or other exotic livestock. It shall be the duty of the board to develop an inspection, testing and monitoring program for such diseases.

(b) An officer or agent of the State Veterinarian is authorized to enter any facility containing cervids or other exotic livestock to inspect the premises and the cervids or exotic livestock. Such officer or agent may inspect, monitor or test any cervid or exotic livestock for disease and may take proper action to control or eradicate any diseases found. While such officers or agents are performing their duties, they shall not be personally liable, except for gross negligence.

(c) As a condition of maintaining a permit for a cervid or other exotic livestock facility, it shall be the duty of the permittee to allow the agents of the State Veterinarian to enter the facility and to conduct inspections and tests.

(4) As a condition of maintaining a permit for a cervid or other exotic livestock facility, the permittee shall immediately notify the State Veterinarian upon discovery of the escape of a cervid or exotic livestock. Any such animal shall be treated as an escaped wild animal and may be disposed of accordingly.

SOURCES: Codes, Hemingway's 1917, § 5492; 1930, § 5414; 1942, § 4837; Laws, 1908, ch. 106; Laws, 1926, ch. 264; Laws, 1928, ch. 61; Laws, 1962, ch. 166, § 1; Laws, 1998, ch. 570, § 4; reenacted without change, Laws, 1999, ch. 509, § 4; Laws, 2000, ch. 536, § 7; Laws, 2003, ch. 352, § 5; Laws, 2003, ch. 516, § 3; Laws, 2011, ch. 384, § 1, eff from and after passage (approved Mar. 14, 2011.)

Editor's Note — Laws of 2003, ch. 516, § 11, provides:

"SECTION 11. Pursuant to Section 1-3-79, Mississippi Code of 1972, the amendments to Section 69-15-9, Mississippi Code of 1972, contained in Laws, 2003, Chapter 516, shall supersede the reenacted section contained in Laws 2003, Chapter 352."

Amendment Notes — The 2011 amendment added (1)(b); and deleted "(1)" and "(2)" in the first sentence in (2).

Cross References — Composition of board, see § 69-15-2.

Animal Care Fund, see § 69-15-19.

Administrative procedures to enforce rules and regulations of Board of Animal Health, see §§ 69-15-51 et seq.

Regulation of drugs for animals, see § 69-17-1.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

This statute is constitutional. Moss v. Mississippi Live Stock San. Bd., 154 Miss. 765, 122 So. 776 (1929).

Livestock owners violating law requiring dipping of animals to eradicate fever tick were not entitled to protection of equity because of threatened invasion of constitutional right. Moss v. Mississippi Live Stock San. Bd., 154 Miss. 765, 122 So. 776 (1929).

Chapter 106 Laws 1908, a former statute, was not invalid as a delegation of legislative functions. Abbott v. State, 106 Miss. 340, 63 So. 667 (1913).

2. Construction and application.

Court of equity is without power to order slaughter of oxen infected with tuberculosis where statute relating to appraisal was not complied with. Mississippi Live Stock San. Bd. v. Broadus, 181 Miss. 122, 178 So. 787 (1938).

In prosecution for moving cattle from Louisiana to Mississippi, evidence that copies of necessary Federal certificates authorizing such movement were customarily mailed to Mississippi Livestock Board, and that secretary thereof had been unable to find copy of any certificate issued to defendant, was insufficient for jury in absence of proof of any law or regulation requiring Federal authorities to file copies of Federal certificates with Mississippi Livestock Board. Calhoun v. State, 172 Miss. 559, 161 So. 297 (1935).

Tick eradication statutes did not authorize entry on owner's premises and seizure of livestock on refusal to dip. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201 (1931), motion overruled, 142 So. 507 (Miss. 1932).

Writ authorizing seizure of livestock on owner's refusal to dip under tick eradication statutes was void, rendering sheriff liable for civil trespass. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201 (1931), motion overruled, 142 So. 507 (Miss. 1932).

The state livestock sanitary board could sue only by officers designated by the statute. Mississippi Live Stock San. Bd. v. Williams, 133 Miss. 98, 97 So. 523 (1923), overruled on other grounds, Pruett v. City of Rosedale, 421 So. 2d 1046 (Miss. 1982).

Section 3, ch. 106 Laws 1908, a former statute, did not make it a misdemeanor to refuse to dip cattle infected with tick fever as provided by rules of the live stock board. Abbott v. State, 106 Miss. 340, 63 So. 667 (1913).

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

CJS. 3B C.J.S., Animals §§ 130 et seq.

§ 69-15-11. Veterinary Diagnostic Laboratory; services of laboratory; fees for services; qualifications of director and staff; advisory council; meetings; funds and property transfer to College of Veterinary Medicine.

(1) The College of Veterinary Medicine at Mississippi State University of Agriculture and Applied Science shall maintain a complete and adequate veterinary diagnostic laboratory in the Jackson vicinity and any person

licensed to practice veterinary medicine, veterinary surgery, veterinary dentistry, or any vocational-agriculture teacher, bona fide farmer or county agent in the State of Mississippi or agent of the State Veterinarian shall have made available to him services of the laboratory. The laboratory shall examine and conduct laboratory tests on specimens submitted by any licensed veterinarian, or vocational-agriculture teacher, bona fide farmer or county agent of this state or agent of the State Veterinarian and issue appropriate reports. The College of Veterinary Medicine shall be required to set reasonable fees for such examinations, tests, reports or other diagnostic service.

(2) The College of Veterinary Medicine shall select a director of the laboratory who holds a degree of veterinary medicine from a recognized college or university; is board certified in one (1) of the following basic diagnostic disciplines; toxicology, pathology, microbiology, virology or clinical pathology and has engaged in the practice of veterinary clinical diagnosis for at least ten (10) years, five (5) years of which were in a supervisory capacity. The director shall select and recommend for employment such veterinarians, bacteriologists, pathologists, technicians, clerical assistants, and other personnel necessary to carry out the objective of this section. The salaries, compensation and expenses of such employees shall be sufficient to insure the employment of competent persons and shall be paid from funds at the disposal of the Veterinary Diagnostic Laboratory. The director shall be responsible to the College of Veterinary Medicine for the daily operations of the laboratory.

(3) There is created an advisory council to advise the College of Veterinary Medicine on matters concerning the Veterinary Diagnostic Laboratory. The council shall be composed of the Chairman of the Senate Agriculture Committee, or his designee; the Chairman of the House Agriculture Committee, or his designee; the Chairman of the Board of Animal Health; the Commissioner of Agriculture and Commerce; a person appointed by the President of Alcorn State University from its land grant staff who is not a member of the Board of Animal Health; a licensed and practicing veterinarian appointed by the President of the Mississippi State Veterinary Medical Association who is not a member of the Board of Animal Health; the State Veterinarian; the State Chemist; and the Dean of the College of Veterinary Medicine. This advisory council shall meet at least twice a year, upon written notification at least fourteen (14) days in advance, to be called by the Dean of the College of Veterinary Medicine. A meeting may also be called by the Commissioner of Agriculture or by a majority of the advisory council with fourteen (14) days' written notice.

The members of the advisory council shall serve in an advisory capacity only. For attending meetings of the council, legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts provided for committee meetings when the Legislature is not in session; however, no per diem or expenses for attending meetings of the council shall be paid while the Legislature is in session. No per diem and expenses shall be paid except for attending meetings of the council without prior approval of the proper committee in their respective houses.

(4) All funds, property and other assets and all current positions of the diagnostic laboratory shall be transferred to the College of Veterinary Medicine on July 1, 2002. The budget of the Veterinary Diagnostic Laboratory shall be funded as a separate line item within the general appropriation bill for the College of Veterinary Medicine.

(5) Information and records pertaining to all animal diseases within the state will be kept confidential except for those reports concerning diseases that are specifically regulated for mandatory control and eradication, or when release of such information is deemed necessary by the State Veterinarian to protect the public health, other livestock or wildlife.

SOURCES: Codes, 1942, § 4836; Laws, 1944, ch. 246, § 4; Laws, 1950, ch. 194; Laws, 1964, ch. 212; Laws, 1986, ch. 500, § 53; Laws, 1990, ch. 519, § 3; Laws, 1998, ch. 570, § 5; Laws, 2002, ch. 523, § 1; reenacted without change, Laws, 2003, ch. 352, § 6, eff from and after July 1, 2003.

Editor's Note — House Bill No. 1584 of the 1998 Regular Session became Laws, 1998, ch. 570, and repealed Section 69-15-1, enacted Sections 69-15-2 and 69-15-17 [Repealed], and amended Sections 69-15-3 and 69-15-7 through 69-15-15.

Laws of 1999, ch. 509, § 8, provides:

"SECTION 8. Sections 69-15-2, 69-15-3, 69-15-7, 69-15-9, 69-15-11, 69-15-13 and 69-15-15, Mississippi Code of 1972, are repealed on July 1, 2003."

§ 69-15-13. Appointment of federal personnel as inspectors; acceptance of federal assistance.

The State Veterinarian is vested with authority to appoint and commission, without salary from the state, as its inspectors, representatives of the United States Department of Agriculture, and to accept from the United States government such assistance, financial and otherwise, for carrying out the purpose of this statute, as may be available from time to time.

SOURCES: Codes, 1930, § 5415; 1942, § 4838; Laws, 1926, ch. 264; Laws, 1998, ch. 570, § 6, eff from and after July 1, 1998; reenacted without change, Laws, 1999, ch. 509, § 6; reenacted without change, Laws, 2003, ch. 352, § 7, eff from and after July 1, 2003.

Editor's Note — Laws of 1999, ch. 509, § 8, provides:

"SECTION 8. Sections 69-15-2, 69-15-3, 69-15-7, 69-15-9, 69-15-11, 69-15-13 and 69-15-15, Mississippi Code of 1972, are repealed on July 1, 2003."

This section was reenacted without change by Laws, 2003, ch. 352, § 7, effective from and after July 1, 2003.

§ 69-15-15. Quarantine for anthrax.

(1) The Board of Animal Health shall have the power and duty to quarantine all herds of cattle where a diagnosis of anthrax is made.

(2) Such quarantine shall remain in effect until the State Veterinarian receives a certificate which is signed by a Mississippi licensed and accredited veterinarian, and which states that such herd has been properly treated and

vaccinated and that the medical waste and any dead animals from such herd have been properly disposed. The proper disposal of such dead animals shall be by burning the animal at the spot of death or by burying the animal six (6) feet deep and covering the animal with quick lime.

(3) The Board of Animal Health shall have the power and duty to quarantine all herds of cattle on lands immediately adjacent to any infected herd. Such quarantine shall remain in effect until the State Veterinarian receives a certificate as specified in subsection (2) of this section.

(4) Any person, firm or corporation failing to comply with any of the provisions of this section, or interfering with the State Veterinarian or any duly appointed officer of the State Veterinarian in the discharge of his duty or for having discharged his duties, shall be deemed in violation of the provisions of this section and shall be subject to the penalties provided in Section 69-15-65, Mississippi Code of 1972.

SOURCES: Laws, 1992, ch. 345 § 1; Laws, 1998, ch. 570, § 7, eff from and after July 1, 1998; reenacted without change, Laws, 1999, ch. 509, § 7; reenacted without change, Laws, 2003, ch. 352, § 8, eff from and after July 1, 2003.

Editor's Note — Laws of 1999, ch. 509, § 8, provides:

"SECTION 8. Sections 69-15-2, 69-15-3, 69-15-7, 69-15-9, 69-15-11, 69-15-13 and 69-15-15, Mississippi Code of 1972, are repealed on July 1, 2003."

This section was reenacted without change by Laws, 2003, ch. 352, § 8, effective from and after July 1, 2003.

Cross References — Power of Board of Animal Health to enact regulations for control of anthrax, see § 69-15-9.

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

Construction of provisions of statute or ordinance governing occasion, time, or manner of summary destruction of domestic animals by public authorities. 42 A.L.R.4th 839.

Am Jur. 4 Am. Jur. 2d, Animals §§ 103-120.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21, 24-26.

CJS. 3B C.J.S., Animals §§ 134 et seq.

§ 69-15-17. Repealed.

Repealed by Laws of 2006, ch. 373, § 1 effective from and after passage March 13, 2006.

[Laws, 1998, ch. 570, § 9(1); Laws, 2003, ch. 352, § 9, eff from and after July 1, 2003.]

Editor's Note — Former § 69-15-17 repealed §§ 69-15-1 through 69-15-15.

§ 69-15-19. Animal Care Fund.

(1) As used in this section, the term "qualified nonprofit organization" means an IRS tax-exempt 501(c)(3) or similar nonprofit organization that has been approved by the Mississippi Board of Animal Health.

(2) There is created in the State Treasury a special fund to be known and designated as the "Animal Care Fund." There shall be deposited in the fund:

(a) The additional fees collected from the issuance of distinctive license tags under Section 27-19-56.18;

(b) Any gifts, grants, donations or matching money from federal, state or local governmental bodies and private persons, associations, groups or corporations making contributions to the fund; and

(c) Any other monies as the Legislature may appropriate or authorize to be deposited therein.

(3) The special fund created under subsection (1) of this section shall be administered by the Mississippi Board of Animal Health. Monies in the special fund shall be allocated and distributed by the Mississippi Board of Animal Health to and among the boards of supervisors of each of the counties, the governing authorities of municipalities in the state and qualified nonprofit organizations. Monies allocated, distributed and received by the boards of supervisors, governing authorities and qualified nonprofit organizations may:

(a) Be expended for the operation and support of county or municipal agencies, boards or departments that provide food, shelter and care, and/or spaying and neutering of lost, abandoned or unwanted pets;

(b) Be expended for the creation, development or expansion of such agencies, boards or departments; or

(c) Be donated by the boards of supervisors and governing authorities to nonprofit groups, organizations and associations that operate similar programs. However, priority for expenditure of such monies shall be given to spaying and neutering programs. None of such monies may be expended for euthanasia. The Mississippi Board of Animal Health is authorized to use a portion of the fund, in an amount not to exceed Two Thousand Dollars ($2,000.00) a year, to fund administrative expenses.

(4) The Mississippi Board of Animal Health shall adopt rules and regulations governing the proper administration of the Animal Care Fund, and establishing guidelines and criteria for the distribution and allocation of monies in the fund, including qualifications for those groups, organizations and associations qualified to accept monies or to which boards of supervisors and governing authorities may make donations.

SOURCES: Laws, 2000, ch. 536, § 6; Laws, 2007, ch. 358, § 1, eff from and after July 1, 2007.

Cross References — Special "I Care for Animals" license tags or plates, see § 27-19-56.18.

Powers of the Mississippi Board of Animal Health generally, see § 69-15-9.

Federal Aspects — Qualification as tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

ARTICLE 2.

ADMINISTRATIVE PROCEDURES TO ENFORCE RULES AND REGULATIONS OF BOARD OF ANIMAL HEALTH.

SEC.
69-15-51. Purpose.
69-15-53. Procedure following charge of violation; reviewing officer.
69-15-55. Hearing committee; hearing procedure.
69-15-57. Certification of findings and recommendations to Board of Animal Health.
69-15-59. Waiver of right to hearing.
69-15-61. Jurisdiction of Board of Animal Health; authority to adopt rules and regulations.
69-15-63. Judicial review.
69-15-65. Penalties.
69-15-67. Failure to pay penalty.
69-15-69. Immunity for witnesses.

§ 69-15-51. Purpose.

It is the purpose of Sections 69-15-51 through 69-15-69 to establish an administrative hearing procedure under the Board of Animal Health to enforce the rules and regulations of the Board of Animal Health and the statutes and laws of the State of Mississippi pertaining to the control and eradication of tuberculosis, anthrax, hog cholera, Texas and splenic fever and the fever-carrying tick (Margaropus annulatus), cattle brucellosis, anaplasmosis, infectious bovine rhinotracheitis, muscosal disease, cattle viral diarrhea, cattle scabies, sheep scabies, swine erysipelas, swine brucellosis, equine encephalomyelitis, rabies, vesicular diseases, salmonella group, newcastle disease, infectious laryngotracheitis, ornithosis-psittacosis, mycoplasma group, equine infectious anemia and any suspected new and/or foreign diseases of livestock and poultry, and all other diseases of animals in this state, currently in effect or hereafter made and promulgated.

SOURCES: Laws, 1989, ch. 449, § 1, eff from and after passage (approved March 24, 1989).

§ 69-15-53. Procedure following charge of violation; reviewing officer.

(1) When any allegation or charge has been made against a person for violating the rules and regulations of the Board of Animal Health or the law relating to the prevention and eradication of diseases in animals and livestock, the Board of Animal Health shall direct the State Veterinarian to act as the reviewing officer. The reviewing officer shall (a) cause the complaint to be in writing and signed by the person making the charge; (b) insure that the complaint is filed in the office of the Board of Animal Health; and (c) send a copy of the complaint and any supporting documents to the person accused along with a request for the accused to respond to the allegations within thirty

(30) days. Such notification shall be accomplished by any of the methods provided for in Rule 4 of the Mississippi Rules of Civil Procedure. Upon receipt of the response and any supporting documents from the accused, the reviewing officer shall screen all information on file to determine the merit of the complaint or lack thereof.

(2) If the reviewing officer determines that the complaint lacks merit, he may dismiss the complaint.

(3) If the reviewing officer determines that there are reasonable grounds to indicate that a violation has occurred or the accused admits to the truth of the allegations upon which the complaint is based, the reviewing officer may levy a fine not to exceed One Thousand Dollars ($1,000.00) for each violation.

(4) If the accused requests a hearing, in writing, within thirty (30) days, the reviewing officer shall notify the Board of Animal Health and a hearing shall be scheduled. The actions of the State Veterinarian with respect to subsections (2) and (3) above shall be reviewable at such hearing, if so requested. The party requesting a hearing shall file a fee of One Hundred Dollars ($100.00) along with the request for hearing to cover the cost of a court reporter.

SOURCES: Laws, 1989, ch. 449, § 2; Laws, 1990, ch. 519, § 4, eff from and after passage (approved April 2, 1990).

§ 69-15-55. Hearing committee; hearing procedure.

(1) The Board of Animal Health, upon notice from the reviewing officer that a hearing is requested, shall appoint a three-member hearing committee which shall consist of one (1) attorney from the Attorney General's office, and two (2) representatives from the Department of Agriculture or from the membership of the Board of Animal Health. The hearing committee shall, within thirty (30) days of notification from the reviewing officer, conduct a hearing at a date, time and place to be determined by the hearing committee, provided that such hearing shall be held and conducted within the county in which the accused resides or in a situs mutually agreeable and that for good cause shown the hearing committee may grant a continuance or continuances of such hearings. Written notice of date, time and place of such hearing shall be mailed to the accused by registered mail, return receipt requested, no less than fifteen (15) days prior to the commencing of the hearing.

(2) A duly qualified court reporter shall be in attendance and shall make a full and complete transcript of the proceedings. The hearing shall be closed unless the accused shall request a public hearing. The hearing committee shall have the right and duty to impose reasonable restrictions as it may deem necessary or appropriate to insure an orderly, expeditious and impartial proceeding, and shall admit all relevant and material evidence except evidence which is unduly repetitious.

(3) For purposes of such hearing, the committee is hereby empowered to require the attendance of witnesses, administer oaths and hear testimony, either oral or documentary, for and against the accused. The board shall have

the authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers, records or other documentary evidence at a hearing pending before the board. Subpoenas to be issued shall be delivered to the sheriff of the county where they are to be executed and the sheriff shall cause them to be served. In case of the failure of any person to comply with any subpoena issued by the board, the board or its authorized representative may invoke the aid of any court of general jurisdiction of this state. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to comply with the order of the court may be treated as contempt thereof.

(4) At the conclusion of the hearing, the hearing committee, upon the majority vote of the members of such committee, shall transmit to the Board of Animal Health a written opinion incorporating findings of fact and recommendations for penalties which shall not exceed One Thousand Dollars ($1,000.00) for each violation.

SOURCES: Laws, 1989, ch. 449, § 3, eff from and after passage (approved March 24, 1989).

§ 69-15-57. Certification of findings and recommendations to Board of Animal Health.

The reviewing officer and/or the hearing committee shall certify findings and recommendations to the Board of Animal Health within five (5) days of the conclusion of the proceedings. The Board of Animal Health shall, at its next regular meeting, review such findings and recommendations and approve, modify or reverse the recommendations made as a result of the review and hearing. The Board of Animal Health shall then notify the accused violator of its decision by certified mail at a mailing address provided during the proceedings, or at the accused violator's last-known address.

SOURCES: Laws, 1989, ch. 449, § 4, eff from and after passage (approved March 24, 1989).

§ 69-15-59. Waiver of right to hearing.

Failure of the accused to request a hearing or respond to the complaint within thirty (30) days shall constitute a waiver of the right to a hearing and any penalties assessed by the board shall be due and payable as provided in Section 69-15-67.

SOURCES: Laws, 1989, ch. 449, § 5, eff from and after passage (approved March 24, 1989).

§ 69-15-61. Jurisdiction of Board of Animal Health; authority to adopt rules and regulations.

The Board of Animal Health shall have jurisdiction over all persons and property necessary to administer and enforce the provisions of Sections

69-15-51 through 69-15-69, the rules and regulations of the board, and all other laws relating to the prevention and eradication of diseases in animals and livestock. The board may adopt rules and regulations to implement the provisions of Sections 69-15-51 through 69-15-69.

SOURCES: Laws, 1989, ch. 449, § 6, eff from and after passage (approved March 24, 1989).

§ 69-15-63. Judicial review.

(1) Any individual aggrieved by a final decision of the Board of Animal Health after its review of the hearing officer's recommendation shall be entitled to judicial review.

(2) An appeal from the board's decision shall be filed in the Circuit Court of the First Judicial District of Hinds County on the record made, including a verbatim transcript of the testimony at the hearing held before the designated hearing committee of the Board of Animal Health. The appeal shall be filed within thirty (30) days after notification of the action of the board is mailed or served and the proceedings in circuit court shall be conducted as other matters coming before the court. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of preparation of the record of the proceedings by the Board of Animal Health, and the filing of a bond in the sum of Five Hundred Dollars ($500.00) conditioned that if the action of the board be affirmed by the circuit court, the aggrieved party shall pay the costs of the appeal and the action of the circuit court.

(3) The scope of review of the circuit court in such cases shall be limited to a review of the record made before the board or hearing committee to determine if the action of the board is unlawful for the reason that it was:

(a) Not supported by any substantial evidence;

(b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the individual.

(4) No relief shall be granted based upon the court's finding of harmless error by the board in complying with the procedural requirements of Sections 69-15-51 through 69-15-61. In the event that there is a finding of prejudicial error in the proceedings, the cause may be remanded for a rehearing consistent with the findings of the court.

(5) Any party aggrieved by action of the circuit court may appeal to the State Supreme Court in the manner provided by law.

SOURCES: Laws, 1989, ch. 449, § 7, eff from and after passage (approved March 24, 1989).

§ 69-15-65. Penalties.

(1) Each violation of the rules and regulations of the Board of Animal Health or violations of any other of the laws governing the eradication of

contagious diseases in animals and livestock shall be subject to the imposition of a civil penalty up to One Thousand Dollars ($1,000.00).

(2) When one or more animals are involved and are the subject of the violation each animal shall constitute a separate violation.

SOURCES: Laws, 1989, ch. 449, § 8, eff from and after passage (approved March 24, 1989).

Cross References — Penalty for violation of provisions pertaining to anthrax quarantine, see § 69-15-15.

Person violating rule or regulation relating to bringing equine into state or local show or sale facility without infectious anemia certificate, as subject to penalties in this section, see § 69-15-117.

§ 69-15-67. Failure to pay penalty.

(1) Any penalty assessed by the Board of Animal Health shall be due and payable within forty-five (45) days of the notification of the board's decision.

(2) In the event that the judgment is not paid within the forty-five (45) days, or within such additional time as the board may allow, the Board of Animal Health through its designated representative may file suit in the circuit court of the county where the defendant resides or in the case of a nonresident defendant in the Circuit Court of the First Judicial District of Hinds County or any other court with appropriate jurisdiction to enforce the decision of the board and recover reasonable attorney's fees and all court costs.

(3) A copy of the notification sent by the board to the violator shall be sufficient proof as to the judgment of the board.

SOURCES: Laws, 1989, ch. 449, § 9, eff from and after passage (approved March 24, 1989).

Cross References — Failure to request hearing resulting in penalty due and payable, see § 69-15-59.

§ 69-15-69. Immunity for witnesses.

No person shall be subject to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter or issue concerning which he may be required to testify to or produce evidence, or provide documentation, before the board or at any of its hearings or conferences, or in compliance with any subpoena, however, no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SOURCES: Laws, 1989, ch. 449, § 10, eff from and after passage (approved March 24, 1989).

ARTICLE 3.

GENERAL PROVISIONS FOR CONTROL AND ERADICATION OF LIVESTOCK AND ANIMAL DISEASES.

SEC.

69-15-101. Areas for control of diseases of livestock and poultry.
69-15-103. Spraying to prevent spread of disease at state fairs and community sale barns.
69-15-105. County or district to establish program to control or eradicate ticks, flies, and other external parasites.
69-15-107. Brucellosis eradication.
69-15-109. Emergency control of foot and mouth disease and other infectious diseases of animals and poultry.
69-15-111. Livestock; how brought into state.
69-15-113. Infected livestock; pay for when destroyed.
69-15-115. Penalties.
69-15-117. All equidae located on premises where public participates in equine activities to be accompanied by copy of negative infectious anemia test; regulations; penalties.

§ 69-15-101. Areas for control of diseases of livestock and poultry.

(1) The boards of supervisors of any county, or one or more counties, are hereby authorized and empowered, in their discretion, to establish areas composed of one or more counties for the purpose of cooperating with the Board of Animal Health and the United States Bureau of Animal Industry, separately or jointly, in providing for a program of control and eradication of certain diseases of livestock and poultry within such area established.

(2) Boards of supervisors of any county or counties acting under the authority conferred by this section are authorized and empowered, in their discretion, to contribute to the support of such area program in an amount equal to thirty-three and one-third per cent of the cost of administering the program in such area. The cost of administering such program to be determined by the board and entered upon their minutes at the time funds are appropriated for the support of same. The funds herein authorized to be expended by the board or boards of supervisors of each county or group of counties comprising such area shall be paid out of the General Fund of such county or counties on order of the board of supervisors duly entered on their minutes.

(3) The Board of Animal Health is hereby authorized to purchase and supply at cost any vaccine necessary for use in control and eradication of diseases of livestock and poultry in such area hereby authorized to be established, to the owners of livestock or poultry residing in an area cooperating with the control program hereby authorized.

(4) In order that any area created under the provisions of this section may have the services of a veterinarian, the board of animal health is hereby authorized and empowered, in their discretion, to employ a veterinarian for

such area, and such area veterinarian shall have the authority to employ local veterinarians with the approval of the board of animal health, and the board of supervisors of the county or counties comprising such area are authorized and empowered to contribute to the payment of the salary of such veterinarians employed by the board of animal health.

SOURCES: Codes, 1942, § 4861.5; Laws, 1948, ch. 197, §§ 1-4.

Cross References — Board of Animal Health, generally, see §§ 69-15-1 et seq. Penalties for violating any provision of this article, see § 69-15-331.

RESEARCH REFERENCES

Am Jur. 1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21 et seq. (destruction of diseased animals).

CJS. 3B C.J.S., Animals §§ 135 et seq.

§ 69-15-103. Spraying to prevent spread of disease at state fairs and community sale barns.

(1) All pens, stalls, barns, or other places where livestock are placed or held for exhibits or shows at all fairs within the state shall be sprayed with an approved insecticide before any animals are placed therein, and immediately after removal of such animals, all such pens, stalls, barns, or other places where such animals have been confined shall be sprayed with an approved disinfectant. Such spraying shall be done under the direction or supervision of the board of animal health. It shall be the duty of the fair managers to see that the provisions hereof are complied with.

(2) All community sale barns within the state where any kind of livestock is sold, shall be sprayed with an approved insecticide before any animals are placed therein and immediately after removal of such animals. Such spraying shall be done at the expense of the owners of said sale barns, and done under directions of the board of animal health. Failure by the owners of said sale barns to comply with the provisions hereof shall be punished by a fine imposed upon them of not less than Twenty-five Dollars ($25.00), nor more than Fifty Dollars ($50.00).

SOURCES: Codes, 1942, § 4861.7; Laws, 1948, ch. 199, §§ 1, 2.

§ 69-15-105. County or district to establish program to control or eradicate ticks, flies, and other external parasites.

(1) The boards of supervisors in the various counties are hereby authorized and empowered, in their discretion, to put into effect the provisions of this section by order of said respective boards spread upon the minutes of such board when petitioned by a majority of livestock owners in any county or affected district.

(2) The board of supervisors of any county, when petitioned, electing to come under the provisions of this section shall be authorized to appropriate

money from the general fund or fix the levy annually of an ad valorem tax, not to exceed two (2) mills, upon the assessed valuation of all real and personal property within the area petitioned for and/or fix a fee not to exceed Twenty-five Cents (25¢) per head on livestock annually, based on cost estimates for a program of controlling or eradicating ticks, flies, and other nuisance insects by dipping livestock or by other appropriate methods.

(3) The board of supervisors of any county, upon designating an area where the program shall be operated, shall request the technical assistance of the Board of Animal Health. The Board of Animal Health shall cooperate in general planning, technical supervision, furnish specifications for vats, and other equipment, select approved chemical agents and test same for effectiveness.

(4) The board of supervisors of any county is authorized to construct dipping vats in suitable locations, purchase other equipment and supplies, and employ such personnel as necessary, including inspectors who shall be enforcement officers for the county board of supervisors.

It shall be the duty of each livestock owner within the area of program operations to cooperate with the board of supervisors and its representatives and comply with the provisions of this section.

(5) The board of supervisors of any county shall have the authority to require all owners when necessary to assemble all their livestock at a designated time and place and have same dipped or treated according to prescribed methods.

Owners who refuse or fail to comply after having been duly notified to have livestock assembled and dipped or treated as prescribed shall be in violation of the provisions of this section and shall be subject to the provisions of Sections 69-15-53 through 69-15-69.

(6) The purpose of this section is to supplement and be in addition to Section 69-15-307, Mississippi Code of 1972, and related statutes. Nothing in this section to the contrary shall replace or minimize existing statute concerning existing laws for the eradication of the cattle fever tick (Margaropus annulatus).

SOURCES: Codes, 1942, § 4861.3; Laws, 1956, ch. 139, §§ 1-7; Laws, 1989, ch. 449, § 11, eff from and after passage (approved March 24, 1989).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 135 et seq.

§ 69-15-107. Brucellosis eradication.

(1) In addition to other authority vested in the Board of Animal Health, it shall have the following powers and duties:

(a) To quarantine all herds of cattle where reactors are disclosed or found by private tests, auction barn sale tests, market cattle testing of slaughter cattle and dairy herds that are suspicious to the brucellosis ring test (milk).

(b) Owners of herds so quarantined in counties carrying out brucellosis eradication programs either in cooperation with the board of supervisors or Animal Health Division, Agricultural Research Services, USDA, shall have a maximum of sixty (60) days from date of quarantine issuance in which to have the quarantined portion of their herd officially tested for brucellosis. The herd owner shall be responsible for making herd test arrangements, using at his option either the federal veterinarian assigned to his area or any private practitioner licensed to test cattle in the herd owner's county under the area plan. It shall be the herd owner's responsibility to assemble, confine, and hold the quarantined cattle at a time and place agreed upon by himself and his selected veterinarian for the purpose of identifying and testing those animals required to be tested under the uniform methods and rules for establishing and maintaining modified certified brucellosis areas adopted by the United States Livestock Sanitary Association and approved by the Animal Health Division, Agricultural Research Services, USDA. These uniform methods and rules shall be followed explicitly in carrying out all official area brucellosis testing work, and owners of quarantined herds shall be responsible for retesting of quarantined portions of their herds within time limits prescribed by these rules. Within these time limits, quarantined herd owners shall enjoy the same options for veterinarian selection and time and test location as outlined above for the original test.

(c) Owners of quarantined herds who fail to take action in having their herd officially tested for brucellosis within sixty (60) days of quarantine issuance shall upon notice from the State Veterinarian assemble or have assembled these quarantined cattle at a place and time designated in order that the brucellosis test may be applied. Assistance shall be given by such owners in confining these cattle in order that the test may be administered properly, and the same cattle shall be returned for checking, tagging and branding of reactors at a time and place designated by the inspector or veterinarian in charge. It shall be the duty of the sheriff in any county in which the work of brucellosis testing is in progress to render to agents of the Board of Animal Health every assistance in enforcing the laws and regulations of said board. If the sheriff of any county shall neglect, fail or refuse to render this assistance when so required, he shall be guilty of a misdemeanor and be punishable as in other cases of malfeasance or misfeasance.

(d) All cattle which have reacted to the brucellosis test shall be tagged and branded and removed from the herd of cattle and shall be permitted to market for slaughter within a period of fifteen (15) days after the date of tagging and branding. When funds are available from the state or federal government, indemnities will be paid to the owner of reactors when properly appraised and disposed of.

(e) As stated in paragraph (b), current uniform methods and rules for establishing and maintaining modified certified brucellosis areas adopted by the United States Livestock Sanitary Association and approved by the Animal Health Division, Agricultural Research Services, USDA, shall be followed.

(2) Any person, firm or corporation failing to comply with any of the provisions of this section or interfering with any duly appointed officer of the Board of Animal Health in the discharge of his duty, or for having discharged his duties, shall be deemed in violation of the provisions of this section and shall be subject to the provisions of Sections 69-15-53 through 69-15-69.

SOURCES: Codes, 1942, § 4837.5; Laws, 1966, ch. 231, §§ 1, 2; Laws, 1989, ch. 449, § 12, eff from and after passage (approved March 24, 1989).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21 et seq. (destruction of diseased animals).

CJS. 3B C.J.S., Animals §§ 135 et seq.

§ 69-15-109. Emergency control of foot and mouth disease and other infectious diseases of animals and poultry.

(1) The Governor of the State of Mississippi, when advised by the Board of Animal Health that an emergency exists due to the presence of foot and mouth disease, rinderpest, contagious pleuropneumonia, or other contagious or infectious diseases of animals, or European fowl pest and similar diseases among poultry, in this state, or chronic wasting disease in any cervids, is hereby authorized to declare a state of emergency and to order all animals or poultry quarantined or slaughtered that may be affected with, or possible carriers of such diseases.

(2) The Governor is hereby authorized and empowered to cooperate with any department of the federal government engaged in the combating and control of any such disease mentioned in subsection (1) and to this end the Governor is authorized and empowered to do any and all things in cooperation with the federal government necessary to the control and extermination of any such diseases mentioned in subsection (1) among animals or poultry that may be affected therewith.

(3) For the purposes of this section, the Governor shall have full and complete police power, and shall exercise same anywhere in the State of Mississippi, and if an emergency should exist to such an extent that such becomes necessary the Governor may employ such personnel to enforce such police powers and quarantine that may be necessary to control and prevent the spreading of any such diseases mentioned in subsection (1) among animals or poultry in this state. Such personnel when appointed by the Governor shall work under the direction of the Mississippi Board of Animal Health, or its

representative, and shall be paid such compensation as the Governor may determine out of any money made available for the enforcement of this section.

(4) When any animals or poultry or materials are ordered to be destroyed, under the provisions of this section, the owner of same shall be paid for each such animal or poultry or materials destroyed an amount not exceeding the amount authorized to be paid by the federal government in matching funds expended for the destruction of each such animal or poultry or materials infected with any such diseases mentioned in subsection (1).

(5) In the event of the happening of an outbreak of any such diseases mentioned in subsection (1) in Mississippi, the Governor is hereby authorized to borrow not to exceed Two Hundred Thousand Dollars ($200,000.00) to carry out the terms and provisions of this section.

SOURCES: Codes, 1942, § 4847.5; Laws, 1948, ch. 196, §§ 1-5; Laws, 1954, ch. 149, §§ 1-5 [¶¶ 1-5]; Laws, 2003, ch. 516, § 4, eff from and after passage (approved Apr. 19, 2003.)

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. Pl & Pr Forms (Rev), Abatement, Survival, and Revival, Form 21.1 (Order stay of destruction of animals).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21 et seq. (destruction of diseased animals).

37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

CJS. 3B C.J.S., Animals §§ 135 et seq.

§ 69-15-111. Livestock; how brought into state.

It shall be unlawful for any person or persons, firm or corporation to drive, convey, transport or allow to drift from any state or territory, into this state any livestock except under the supervision and in accordance with the rules and regulations of the Board of Animal Health. Steers may be moved into the state for feeding and grazing purposes under special permit issued by the State Veterinarian.

Livestock shipped, trailed, driven or otherwise transported into this state from other states or territories shall be subject to examinations and tests approved by the Board of Animal Health for the purpose of determining if such animals are free of infectious abortion or bangs disease. Should such animals react to the tests, they shall immediately upon notice to the owner from the board or one (1) of the board's inspectors or veterinarians be returned to the state from which they came, or slaughtered under the supervision and direction of the board. The Board of Animal Health is authorized and empowered to require livestock owners or persons having livestock in charge, affected with, or exposed to infectious abortion, upon notice to assemble or have assembled such livestock at a place and time designated by an inspector or veterinarian of the Board of Animal Health or of the United States Bureau of Animal Industry in order that the proper and necessary tests and examinations can be made. All animals which react to the test for infectious abortion or show marked diagnostic symptoms of infectious abortion shall be quarantined, segregated, isolated or otherwise disposed of under the direction of the Board of Animal Health.

Any person, firm or corporation violating any of the provisions of this section or any of the rules and regulations of the Board of Animal Health shall be deemed in violation of the provisions of this section and shall be subject to the provisions of Sections 69-15-53 through 69-15-69.

SOURCES: Codes, 1930, § 5439; 1942, § 4862; Laws, 1930, ch. 91; Laws, 1989, ch. 449, § 13, eff from and after passage (approved March 24, 1989).

Cross References — Payment by county for cattle injured in dipping process, see § 19-5-13.

Common graves for livestock dying as result of epidemic, see § 19-5-15.

Regulation of feeding of swine, see §§ 69-11-1 et seq.

Appraisement and payment for condemned cattle, see § 69-15-211.

Disposal of bodies of animals dead from disease, see § 97-27-3.

Crime of selling diseased animal, see § 97-27-5.

Crime of failing to dispose of or segregate diseased animal, see § 97-27-7.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 269 et seq.

§ 69-15-113. Infected livestock; pay for when destroyed.

Owners of livestock infected with any contagious or infectious disease, whose animals are destroyed by authority of the board of animal health shall receive compensation from the state in accordance with the following provisions:

Before authorizing the destruction of such diseased animals, they shall be appraised by a duly commissioned representative of the board of animal health of the State of Mississippi or a cooperating representative of the U. S. Department of Agriculture, Bureau of Animal Industry, duly commissioned by said board of animal health. If the owner shall refuse to accept such appraisal, the animals shall be appraised (under oath) by three competent and disinterested appraisers; one to be selected by the duly commissioned representative of the board of animal health or of the U. S. Department of Agriculture, Bureau of Animal Industry duly commissioned by said board of animal health, one by the owner, and those two to select a third; the appraisal to be based upon the value of the animals at the time the animals are condemned for destruction; and, provided, further, that the state to pay not to exceed one-third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof, when any portion of said appraised value is paid by the U. S. Department of Agriculture, and not more than two-thirds thereof in the event no portion is paid by said U. S. Department of Agriculture. In no event shall the state be liable on an appraised value exceeding $25.00 per head for grade cattle and $50.00 per head for registered purebred cattle.

Upon receipt of a duly certified copy of the appraisal of the stock condemned to be destroyed, and a certificate from the board of animal health that the condemned stock has been destroyed in accordance with the rules and regulations of said board, a requisition shall be issued, signed by the executive officer and the chairman of the state board of animal health, authorizing the state auditor to issue a warrant for the amount stipulated out of funds in the state treasury especially appropriated for that purpose.

SOURCES: Codes, Hemingway's 1917, § 5501; 1930, § 5416; 1942, § 4839; Laws, 1916, ch. 122; Laws, 1938, ch. 177.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Payment by county for cattle injured in dipping process, see § 19-5-13.

Appraisement and payment for condemned cattle, see § 69-15-211.

JUDICIAL DECISIONS

1. In general.

Appraisement by three competent and disinterested appraisers is condition precedent to Board's requirement of destruction of diseased animals. Mississippi Live Stock San. Bd. v. Broadus, 181 Miss. 122, 178 So. 787 (1938).

Appraisement is prerequisite to reimbursement of owner, from state funds, for destruction of cattle. Mississippi Live Stock San. Bd. v. Broadus, 181 Miss. 122, 178 So. 787 (1938).

Purpose of appraisement is disinterested valuation and attempted appraisal by owner and representative of State Livestock Sanitary Board is ineffective. Mississippi Live Stock San. Bd. v. Broadus, 181 Miss. 122, 178 So. 787 (1938).

Statute does not authorize State Livestock Sanitary Board to order destruction of tubercular cattle without some compensation to owner. Mississippi Live Stock San. Bd. v. Broadus, 181 Miss. 122, 178 So. 787 (1938).

Court of equity is without power to order slaughter of oxen infected with tuberculosis where statute relating to appraisal was not complied with. Mississippi Live Stock San. Bd. v. Broadus, 181 Miss. 122, 178 So. 787 (1938).

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

Am Jur. 4 Am. Jur. 2d, Animals §§ 103-120.

1 Am. Jur. Pl & Pr Forms (Rev), Abatement, Survival, and Revival, Form 21.1 (Order stay of destruction of animals).

37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

CJS. 3B C.J.S., Animals §§ 99 et seq.

§ 69-15-115. Penalties.

Any person, firm or corporation violating any of the provisions of Article 5 of this chapter, or any of the rules and regulations of the Board of Animal Health, relative to the control and eradication of tuberculosis, anthrax, hog cholera, Texas and splenic fever and the fever-carrying tick (Margaropus annulatus), cattle brucellosis, anaplasmosis, infectious bovine rhinotracheitis, muscosal disease, cattle viral diarrhea, cattle scabies, sheep scabies, swine erysipelas, swine brucellosis, equine encephalomyelitis, rabies, vesicular diseases, salmonella group, newcastle disease, infectious laryngotracheitis, ornithosis-psittacosis, mycoplasma group, equine infectious anemia and any suspected new and/or foreign diseases of livestock and poultry, and all other diseases of animals in this state, made and promulgated thereunder shall be subject to the provisions of Sections 69-15-53 through 69-15-69.

SOURCES: Codes, Hemingway's 1921 Supp. § 5506f; 1930, § 5424; 1942, § 4847; Laws, 1920, ch. 327; Laws, 1930, ch. 99; Laws, 1962, ch. 166, § 2; Laws, 1981, ch. 316, § 1; Laws, 1989, ch. 449, § 14, eff from and after passage (approved March 24, 1989).

Cross References — Administrative procedures to enforce rules and regulations of Board of Animal Health, see §§ 69-15-51 et seq.

General penalties for violating provisions of this article, see § 69-15-331.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-15-117. All equidae located on premises where public participates in equine activities to be accompanied by copy of negative infectious anemia test; regulations; penalties.

(1) All equidae located on any premises within the state where the public participates in equine activities for any purpose, including, but not limited to, training, breeding, performing or exhibition shall be accompanied by the original copy of a negative current equine infectious anemia (EIA) test. All equidae moving within the state for any reason shall be accompanied by the original copy of a negative current equine infectious anemia (EIA) test. Equidae being sold at a public sale or sold at a private sale shall have a negative current equine infectious anemia (EIA) test.

(2) The Board of Animal Health shall promulgate rules and regulations to enforce this section.

(3) Any person violating this section or the rules and regulations promulgated under this section by the Board of Animal Health is subject to the penalties provided in Section 69-15-65.

SOURCES: Laws, 1995, ch. 509, § 1; Laws, 2001, ch. 573, § 1, eff from and after July 1, 2001.

Article 5.

Cattle Tuberculosis.

Sec.
69-15-201. Employment of veterinarians to co-operate in tests.
69-15-203. Veterinarians to be detailed to aid counties.
69-15-205. Elections on tuberculosis control.
69-15-207. Submission of cattle for tuberculin tests.
69-15-209. Condemnation, branding and disposition of cattle reacting to tuberculin tests.
69-15-211. Payment for condemned cattle in counties engaged in tuberculosis eradication under area plan; appraisement.
69-15-213. Payment for condemned cattle in counties not operating on area plan.

§ 69-15-201. Employment of veterinarians to co-operate in tests.

The State Veterinarian, with the approval and consent of the Board of Animal Health is directed to employ one or more qualified veterinarians to be paid from the funds at the disposal of said board, who shall cooperate with the veterinarians of the U.S. Department of Agriculture, Bureau of Animal Industry, in testing cattle for tuberculosis in this state.

SOURCES: Codes, Hemingway's 1921 Supp. § 5506a; 1930, § 5417; 1942, § 4840; Laws, 1920, ch. 327; Laws, 1930, ch. 99; Laws, 1990, ch. 519, § 5, eff from and after passage (approved April 2, 1990).

Cross References — Penalties for violating any provision of this article, see § 69-15-331.

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

§ 69-15-203. Veterinarians to be detailed to aid counties.

The State Veterinarian is directed to detail a veterinarian to assist such counties as desire to undertake the control and eradication of tuberculosis among cattle and such assistance shall be given to the counties in the order in which request is made and to the extent that the funds of the board will permit.

SOURCES: Codes, Hemingway's 1921 Supp. § 5506b; 1930, § 5418; 1942, § 4841; Laws, 1920, ch. 327; Laws, 1930, ch. 99; Laws, 1990, ch. 519, § 6, eff from and after passage (approved April 2, 1990).

§ 69-15-205. Elections on tuberculosis control.

The board of supervisors of any county in the State of Mississippi may, by order entered on the minutes of said board, express their intention to engage in the eradication of tuberculosis, in livestock under the area plan in cooperation with the board of animal health, and the United States Bureau of Animal Industry. Such order so entered upon the minutes of said board shall be published for thirty days in a newspaper published in said county and having a general circulation therein, and at the expiration of said thirty days if twenty per cent or more of the qualified electors of said county shall not file with said board a petition protesting against said order, the board shall enter an order upon their minutes to so engage in said eradication provided for in the previous order; but should twenty per cent or more of the qualified electors of said county file with said board a petition protesting against said order, then the board of supervisors shall call an election, after having given the notice required by law, and if a majority of the qualified electors of said county voting at said election in favor of engaging in such eradication, then the board shall enter upon its minutes an order to that effect; should a majority of the qualified electors of said county voting fail to vote in favor of engaging in such eradication, then said board shall enter an order upon its minutes refusing to engage in such eradication.

SOURCES: Codes, Hemingway's 1921 Supp. § 5506c; 1930, § 5419; 1942, § 4842; Laws, 1920, ch. 327; Laws, 1930, ch. 99.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 127 et seq.

§ 69-15-207. Submission of cattle for tuberculin tests.

In counties doing tuberculosis eradication work under the provisions of this article, owners of cattle are required to submit all their cattle to be tuberculin tested at such time and place as designated by the board of animal health, and provide such help as may be needed by the inspector doing the work.

SOURCES: Codes, 1930, § 5423; 1942, § 4846; Laws, 1930, ch. 99.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 127 et seq.

§ 69-15-209. Condemnation, branding and disposition of cattle reacting to tuberculin tests.

Cattle which react to the tuberculin test or show marked diagnostic symptoms of tuberculosis shall be condemned and branded with the letter "T" on the left jaw, and be disposed of as directed by the board of animal health.

SOURCES: Codes, Hemingway's 1921 Supp. § 5506e; 1930, § 5422; 1942, § 4845; Laws, 1920, ch. 327; Laws, 1930, ch. 99.

RESEARCH REFERENCES

Am Jur. 1B Am. Jur. Pl & Pr Forms (Rev), Animals, Forms 21 et seq. (destruction of diseased animals).

CJS. 3B C.J.S., Animals §§ 127 et seq.

§ 69-15-211. Payment for condemned cattle in counties engaged in tuberculosis eradication under area plan; appraisement.

The county boards of supervisors of counties engaged in eradicating tuberculosis in livestock under the area plan in co-operation with the board of animal health and the United States Bureau of Animal Industry may pay out of the general funds of the county money for necessary expenditure including the employment of accredited or approved veterinarians and for the payment of indemnity to cattle owners who have animals slaughtered because of having reacted to a tuberculin test authorized by the board and the United States Bureau of Animal Industry. Provided that said animals so classed are appraised and slaughtered as provided in the rules and regulations of the board of animal health. The indemnity received shall not exceed Fifty Dollars ($50.00) for each grade animal or One Hundred Dollars ($100.00) for each registered animal so condemned.

SOURCES: Codes, Hemingway's 1921 Supp. § 5506d; 1930, § 5420; 1942, § 4843; Laws, 1920, ch. 327; Laws, 1930, ch. 99.

Cross References — Proof of claim and payment, see § 19-13-49.

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

Am Jur. 4 Am. Jur. 2d, Animals §§ 103-120.

CJS. 3B C.J.S., Animals §§ 127 et seq.

§ 69-15-213. Payment for condemned cattle in counties not operating on area plan.

The boards of supervisors of the various counties of the State of Mississippi which are not engaged in the eradication of bovine tuberculosis on the area plan, may in their discretion, pay indemnity on cattle which react to a co-operative tuberculin test authorized by the Mississippi Board of Animal Health on the same basis as provided in Section 69-15-211.

SOURCES: Codes, 1930, § 5421; 1942, § 4844; Laws, 1930, ch. 99.

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. 2d, Animals § 103-120.

CJS. 3B C.J.S., Animals §§ 127 et seq.

ARTICLE 7.

ERADICATION OF CATTLE TICKS AND OTHER ANIMAL PARASITES.

SEC.
69-15-301. Duties of Board of Animal Health; assistant executive officer for tick eradication; inspectors, range riders and other employees.
69-15-303. Advisory commission for tick eradication.
69-15-305. Appointment, dismissal and compensation of local state inspectors and range riders.
69-15-307. Board of supervisors to assist in eradicating tick fever.
69-15-309. When board of supervisors to act.
69-15-311. Infected cattle to be dipped.
69-15-313. Board of supervisors to provide dipping vats when necessary.
69-15-315. Violation by supervisors.
69-15-317. Cattle and other livestock to be dipped.
69-15-319. Notice to be posted in certain cases.
69-15-321. Procedure when owner fails to dip.
69-15-323. Expenses incurred in enforcement to be lien on animal.
69-15-325. Driving and drifting from quarantined to free county.
69-15-327. Duty of sheriff; penalty for failure to act.
69-15-329. Destruction of vats.

§ 69-15-301. Duties of Board of Animal Health; assistant executive officer for tick eradication; inspectors, range riders and other employees.

(1) The work of tick eradication shall be prosecuted by the Board of Animal Health under the following provisions: The State Veterinarian, with the approval and consent of the board, shall hire an assistant executive officer for tick eradication who shall receive a salary of not exceeding Four Thousand Dollars ($4,000.00) per annum to be fixed by the board, who shall be duly qualified for the work and of recognized ability and experience in tick eradication and who shall have full authority and jurisdiction, subject to the rules and regulations of the Board of Animal Health in the matter, direction and administration of the work of eradication of the Texas and splenic fever and the fever-carrying tick, in the State of Mississippi, until such time as in the judgment of the said board it is necessary for the prosecution to a successful conclusion of the campaign of eradicating said ticks and tick fever.

(2) The assistant executive officer shall have for the purpose of eradication of the Texas and splenic fever or fever-carrying tick, all the powers, authority and jurisdiction now conferred by law upon the Executive Officer of the Board of Animal Health, upon the conditions and limitations set forth in this section and in Section 69-15-303, Mississippi Code of 1972.

(3) The assistant executive officer shall employ such inspectors and range riders and other employees as may be deemed necessary by the Board of

Animal Health for the successful prosecution of the work of eradication of the said Texas and splenic fever and fever-carrying tick, the employment of such inspectors, range riders, and other employees to be subject to the approval of the advisory commission on tick eradication, the compensation of such inspectors, range riders, and other employees to be subject to the approval of the said advisory commission, fixed by the board and paid out of any appropriation made to said board for tick eradication.

SOURCES: Codes, Hemingway's 1917, § 5492; 1930, § 5414; 1942, § 4837; Laws, 1908, ch. 106; Laws, 1926, ch. 264; Laws, 1928, ch. 61; Laws, 1962, ch. 166, § 1; Laws, 1990, ch. 519, § 7, eff from and after passage (approved April 2, 1990).

Cross References — Board of Animal Health, generally, see §§ 69-15-1 et seq.

Penalties for violating any provision of this article, see § 69-15-331.

Regulation of drugs for animals, see §§ 69-17-1 et seq.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

This statute is constitutional. Moss v. Mississippi Live Stock San. Bd., 154 Miss. 765, 122 So. 776 (1929).

Livestock owners violating law requiring dipping of animals to eradicate fever tick were not entitled to protection of equity because of threatened invasion of constitutional right. Moss v. Mississippi Live Stock San. Bd., 154 Miss. 765, 122 So. 776 (1929).

Chapter 106 Laws 1908, a former statute, was not invalid as a delegation of legislative functions. Abbott v. State, 106 Miss. 340, 63 So. 667 (1913).

2. Construction and application.

Court of equity lacked power to order slaughter of oxen infected with tuberculosis where statute relating to appraisal was not complied with. Mississippi Live Stock San. Bd. v. Broadus, 181 Miss. 122, 178 So. 787 (1938).

In prosecution for moving cattle from Louisiana to Mississippi, evidence that copies of necessary Federal certificates authorizing such movement were customarily mailed to Mississippi Livestock Board, and that secretary thereof had been unable to find copy of any certificate issued to defendant, was insufficient for jury in absence of proof of any law or regulation requiring Federal authorities to file copies of Federal certificates with Mississippi Livestock Board. Calhoun v. State, 172 Miss. 559, 161 So. 297 (1935).

Tick eradication statutes do not authorize entry on owner's premises and seizure of livestock on refusal to dip. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201 (1931), motion overruled, 142 So. 507 (Miss. 1932).

Writ authorizing seizure of livestock on owner's refusal to dip under tick eradication statutes was void, rendering sheriff liable for civil trespass. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201 (1931), motion overruled, 142 So. 507 (Miss. 1932).

The state live stock sanitary board could sue only by officers designated by the statute. Mississippi Live Stock San. Bd. v. Williams, 133 Miss. 98, 97 So. 523 (1923), overruled on other grounds, Pruett v. City of Rosedale, 421 So. 2d 1046 (Miss. 1982).

Section 3, ch. 106 Laws 1908, a former statute, did not make it a misdemeanor to refuse to dip cattle infected with tick fever as provided by rules of the live stock board. Abbott v. State, 106 Miss. 340, 63 So. 667 (1913).

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

CJS. 3B C.J.S., Animals §§ 135 et seq.

§ 69-15-303. Advisory commission for tick eradication.

The Governor shall appoint a commission of five men of recognized business ability and integrity, three of whom shall reside south of the Alabama & Vicksburg division of the Illinois Central Railroad, and two of whom shall reside north of the said Alabama & Vicksburg division of the Illinois Central Railroad, which shall be an advisory commission to the Board of Animal Health and the assistant executive officer thereof in all matters pertaining to the eradication of the Texas fever and splenic fever and fever-carrying tick, and it shall be the duty of said commission to advise with the Board of Animal Health and the executive officer thereof in all matters pertaining to the eradication of the tick fever and ticks from the State of Mississippi, and to aid and assist in the prosecution of said work to a successful conclusion. The said commission may elect one of its members as chairman and one as secretary and the members shall receive no compensation, but shall be reimbursed for all necessary expenses actually incurred in the performance of the duties hereby imposed, same to be paid by the Board of Animal Health upon itemized accounts duly filed with and approved by the board. However, the expense of each of the commissioners shall not exceed the sum of Two Hundred Fifty Dollars ($250.00).

All vacancies which occur in the advisory commission shall be filled by election by a vote of a majority of the remaining members of the commission.

SOURCES: Codes, Hemingway's 1917, § 5492; 1930, § 5414; 1942, § 4837; Laws, 1908, ch. 106; Laws, 1926, ch. 264; Laws, 1928, ch. 61; Laws, 1962, ch. 166, § 1, eff from and after passage (approved April 30, 1962).

Cross References — Board of Animal Health, generally, see §§ 69-15-1 et seq.
Regulation of drugs for animals, see §§ 69-17-1 et seq.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

This statute is constitutional. Moss v. Mississippi Live Stock San. Bd., 154 Miss. 765, 122 So. 776 (1929).

Livestock owners violating law requiring dipping of animals to eradicate fever tick were not entitled to protection of equity because of threatened invasion of constitutional right. Moss v. Mississippi Live Stock San. Bd., 154 Miss. 765, 122 So. 776 (1929).

Chapter 106 Laws 1908, a former statute, was not invalid as a delegation of legislative functions. Abbott v. State, 106 Miss. 340, 63 So. 667 (1913).

2. Construction and application.

Court of equity lacked power to order slaughter of oxen infected with tuberculosis where statute relating to appraisal was not complied with. Mississippi Live

Stock San. Bd. v. Broadus, 181 Miss. 122, 178 So. 787 (1938).

In prosecution for moving cattle from Louisiana to Mississippi, evidence that copies of necessary Federal certificates authorizing such movement were customarily mailed to Mississippi Livestock Board, and that secretary thereof had been unable to find copy of any certificate issued to defendant, was insufficient for jury in absence of proof of any law or regulation requiring federal authorities to file copies of federal certificates with Mississippi Livestock Board. Calhoun v. State, 172 Miss. 559, 161 So. 297 (1935).

Tick eradication statutes do not authorize entry on owner's premises and seizure of livestock on refusal to dip. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201 (1931), motion overruled, 142 So. 507 (Miss. 1932).

Writ authorizing seizure of livestock on owner's refusal to dip under tick eradication statutes was void, rendering sheriff liable for civil trespass. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201 (1931), motion overruled, 142 So. 507 (Miss. 1932).

The state live stock sanitary board could sue only by officers designated by the statute. Mississippi Live Stock San. Bd. v. Williams, 133 Miss. 98, 97 So. 523 (1923), overruled on other grounds, Pruett v. City of Rosedale, 421 So. 2d 1046 (Miss. 1982).

Section 3, ch. 106 Laws 1908, a former statute, did not make it a misdemeanor to refuse to dip cattle infected with tick fever as provided by rules of the live stock board. Abbott v. State, 106 Miss. 340, 63 So. 667 (1913).

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

§ 69-15-305. Appointment, dismissal and compensation of local state inspectors and range riders.

The State Veterinarian shall appoint the necessary number of local state inspectors and range riders to assist the counties in systematic tick eradication, who shall be commissioned by the Board of Animal Health as livestock inspectors. The salaries of said inspectors and range riders shall be fixed by the Board of Animal Health and shall be sufficient to insure the employment of competent men. If the services of any of said inspectors or range riders is not satisfactory to the State Veterinarian, his services shall be immediately discontinued, and the decision of the State Veterinarian, after confirmation by the board, shall be final without recourse and the commission of said inspector shall be cancelled. The salaries of said inspectors shall be paid from funds at the disposal of the Board of Animal Health, drawn by secretary and approved by chairman.

SOURCES: Codes, 1930, § 5429; 1942, § 4852; Laws, 1926, ch. 265.

§ 69-15-307. Board of supervisors to assist in eradicating tick fever.

The board of supervisors in the various counties of the state are authorized and empowered to appropriate money out of the general fund of the county to be used for the purpose of co-operating with the Mississippi Board of Animal Health and the United States Department of Agriculture, Bureau of Animal

Industry, in eradicating tick fever, cattle tick, lice, and other animal parasites, and any other contagious and infectious diseases of livestock or the causes of such diseases.

SOURCES: Codes, 1930, § 5425; 1942, § 4848; Laws, 1926, ch. 265; Laws, 1944, ch. 194.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 135 et seq.

§ 69-15-309. When board of supervisors to act.

If it shall be determined by the State Veterinarian, or his authorized agent, that any county or counties shall be partially or completely infested with the cattle tick (Margaropus annulatus), the board of supervisors of said counties which are partially or completely infested with the cattle tick (Margaropus annulatus) shall immediately take up the work of systematic tick eradication as provided in this article.

SOURCES: Codes, 1930, § 5427; 1942, § 4850; Laws, 1926, ch. 265.

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

§ 69-15-311. Infected cattle to be dipped.

Systematic dipping of all cattle, horses, jacks, jennets and mules infested with or exposed to the cattle tick (Margaropus annulatus), shall be taken up as soon as practical in all counties or portions of counties that shall at any time be found partially or completely infested with the cattle tick (Margaropus annulatus) under the direction of the State Veterinarian, acting under the authority as herein provided, and as provided by the rules and regulations of the board of animal health. However, this section shall not hinder or handicap the operation of stock law.

SOURCES: Codes, 1930, § 5426; 1942, § 4849; Laws, 1926, ch. 265.

Cross References — Tick reinfestation in counties not under statewide stock law, see § 69-13-13.

Dipping of uninfected cattle, see § 69-15-317.

JUDICIAL DECISIONS

1. In general.

Owner of livestock which was unlawfully seized and sold under tick eradication statutes was entitled to recover market value. Gilbert v. Crosby, 160 Miss. 711, 135 So. 201 (1931), motion overruled, 142 So. 507 (Miss. 1932).

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

CJS. 3B C.J.S., Animals §§ 127 et seq.

§ 69-15-313. Board of supervisors to provide dipping vats when necessary.

The boards of supervisors, after being notified by the State Veterinarian that the cattle tick (Margaropus annulatus) is known to exist in their respective counties, shall provide such number of dipping vats as may be fixed by the State Veterinarian or his authorized representative, and provide the proper chemicals and other materials necessary to be used in the work of systematic tick eradication in such counties, and said work of systematic tick eradication shall begin on the date indicated by the State Veterinarian and continue until the cattle tick (Margaropus annulatus) is completely eradicated, and notice in writing of same is given by the State Veterinarian.

SOURCES: Codes, 1930, § 5428; 1942, § 4851; Laws, 1926, ch. 265.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 127 et seq.

§ 69-15-315. Violation by supervisors.

If the board of supervisors shall fail, refuse or neglect to comply with the provisions of this article, the state veterinarian or an authorized agent of the State Veterinarian, shall apply to any court of competent jurisdiction for a writ of mandamus or shall institute such other proceedings as may be necessary and proper to compel such county boards of supervisors to comply with the provisions of this article applying to them.

SOURCES: Codes, 1930, § 5430; 1942, § 4853; Laws, 1926, ch. 265.

Cross References — Remedy of mandamus, generally, see §§ 11-41-1 et seq.

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. Pl & Pr Forms (Rev), Abatement, Survival, and Revival, Form 21.1 (Order stay of destruction of animals).

17 Am. Jur. Pl & Pr Forms (Rev), Mandamus, Form 205.1 (Alternative writ of mandamus — To prevent destruction of animals).

§ 69-15-317. Cattle and other livestock to be dipped.

Any person, or persons, firms or corporations, owning or having in charge any cattle, horses, jacks, jennets or mules in any county where tick eradication shall be taken up, or is in progress under existing laws, shall, on notification by any livestock inspector to do so, have such cattle, horses, jacks, jennets or mules dipped regularly every 14 days in a vat properly charged with arsenical solution, as recommended by the United States Bureau of Animal Industry under the supervision of said inspector, at such time and places and in such manner as may be designated by the livestock inspector. All animals dipped shall be marked for identification. The dipping period shall be continued as long as may be required by the rules and regulations of the State Board of Animal Health, which shall be sufficient in number and length of time to completely destroy and eradicate all cattle ticks (margaropus annulatus) in such county or counties.

SOURCES: Codes, 1930, § 5431; 1942, § 4854; Laws, 1926, ch. 265.

Cross References — Dipping of cattle infected with ticks, see § 69-15-311.

JUDICIAL DECISIONS

1. In general.

Officers and agents of Livestock Sanitary Board are not authorized to seize stock for dipping under tick eradication statute without proper writ. Cook v. Waldrop, 160 Miss. 862, 133 So. 894 (1931).

Owner's failure to protest against invasion of premises to seize livestock for dipping does not constitute consent to invasion. Cook v. Waldrop, 160 Miss. 862, 133 So. 894 (1931).

In replevin action to recover possession of livestock, testimony showing sheriff acted in accordance with statute on plaintiff's refusal to dip stock was admissible on question of punitive damages. Cook v. Waldrop, 160 Miss. 862, 133 So. 894 (1931).

Where parties concerned with taking and detention of livestock for dipping acted in good faith in accordance with apparent rights under tick eradication statute, owner in replevin action could not recover punitive damages. Cook v. Waldrop, 160 Miss. 862, 133 So. 894 (1931).

Under § 2 Ch. 221 Laws 1918, a former statute, a person impounding cattle infested with fever tick may cause tick eradication authorities to take charge of them as running at large although such cattle are in his pasture. Cooper v. Martin, 141 Miss. 756, 105 So. 740 (1925).

Under § 1 Ch. 167 Laws 1916, a former statute, authorizing the appointment of persons to assist the county superintendent of tick eradication and their discharge by the board of supervisors, the latter cannot be compelled to discharge such persons by a writ of mandamus since the board has authority to exercise its discretion. State ex rel. Potter v. Board of Supvrs., 133 Miss. 562, 98 So. 101 (1923).

Under Ch. 221 Laws 1918, a former statute, undipped stock infested with ticks could not be seized on the public road in possession of the owner without a writ of seizure. Byrd v. Welch, 128 Miss. 839, 91 So. 568 (1922).

Courts do not take judicial notice of rules and regulations of the live stock sanitary board, but they must be proven as municipal ordinances are required to be. Covington County v. Pickering, 123 Miss. 20, 85 So. 114 (1920).

Chapter 221 Laws 1918, is supplementary to Ch. 167 Laws 1916 and does not repeal it. McMillan v. Live Stock San. Bd., 119 Miss. 500, 81 So. 169 (1919).

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

CJS. 3B C.J.S., Animals §§ 127 et seq.

§ 69-15-319. Notice to be posted in certain cases.

Quarantines and dipping notices for cattle, horses, jacks, jennets and mules, the owner or owners of which cannot be found, shall be served by posting copy of such notice in not less than three public places within the county in community where stock were found, one of which shall be placed at the county court house. Such posting shall be due and legal notice.

SOURCES: Codes, 1930, § 5432; 1942, § 4855; Laws, 1926, ch. 265.

§ 69-15-321. Procedure when owner fails to dip.

Cattle, horses, jacks, jennets or mules infested with or exposed to the cattle tick (margaropus annulatus), in any county known to be partly or wholly infested with such tick, the owner or owners of which, after five days written notice from a livestock inspector, or such animals as are provided for under Section 69-15-319, shall fail or refuse to dip such animals at a time and place designated in such notice and regularly every 14 days thereafter until released, in a vat properly charged with arsenical solution, under the supervision of a livestock inspector, said cattle, horses, jacks, jennets or mules shall be dipped, quarantined and placed in the custody of the sheriff, by the livestock inspector. Suitably fenced areas for holding such cattle while in the custody of the sheriff shall be provided by the board of supervisors.

SOURCES: Codes, 1930, § 5433; 1942, § 4856; Laws, 1926, ch. 265.

JUDICIAL DECISIONS

1. In general.

Officers and agents of Livestock Sanitary Board are not authorized to seize stock for dipping under tick eradication statute without proper writ. Ainsworth v. Smith, 157 Miss. 202, 127 So. 771 (1930); Cook v. Waldrop, 160 Miss. 862, 133 So. 894 (1931).

Where parties concerned with taking and detention of livestock for dipping acted in good faith in accordance with apparent rights under tick eradication statute, owner in replevin action could not recover punitive damages. Cook v. Waldrop, 160 Miss. 862, 133 So. 894 (1931).

In replevin action to recover possession of livestock, testimony showing sheriff acted in accordance with statute on plaintiff's refusal to dip stock was admissible on question of punitive damages. Cook v. Waldrop, 160 Miss. 862, 133 So. 894 (1931).

Owner's failure to protest against invasion of premises to seize livestock for dipping does not constitute consent to invasion. Cook v. Waldrop, 160 Miss. 862, 133 So. 894 (1931).

Dipping vat inspectors going on premises and taking mules in supposed performance of duties were not guilty of criminal trespass. Bacot v. State, 158 Miss. 258, 130 So. 282 (1930).

RESEARCH REFERENCES

ALR. Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

§ 69-15-323. Expenses incurred in enforcement to be lien on animal.

Any expense incurred in the enforcement of Section 69-15-321 or for feed, care and handling of such animals while undergoing the process of tick eradication, and any expense incurred in handling, dipping, confining, feeding or pasturing of any animals while in the custody of the sheriff shall constitute a lien upon such animal or animals to be paid by the owner or owners of the animals before the same are released by the sheriff. Should the owner or owners of cattle, horses, jacks, jennets and mules which have been placed in the custody of the sheriff as herein provided, fail or refuse to pay said expenses after five days' notice, they shall be sold by the sheriff of the county after ten days advertising, either by notice at courthouse door and two other public places in the neighborhood of the place at which the animal was taken up, or in the newspaper published in the county having general circulation therein. The said advertisement shall state therein the time and place of sale, which place shall be where the animal is confined. The sale shall be at public auction and to the highest bidder, for cash. Out of the proceeds of the sale, the sheriff shall pay the cost of publishing the notices, costs of dipping, feeding and caring for the animals and the costs of sale which shall include $2.00 in the case of each sale, to said sheriff. The surplus, if any, shall be paid to the owner of the animal or animals, if he can be ascertained. If he cannot be ascertained within thirty days after such sale, then the sheriff shall pay such surplus to the county treasurer for benefit of the general fund of the county; provided, however, that if the owner of the animal or animals shall within three years after the fund is turned over to the county treasurer, as aforesaid, prove to the satisfaction of the board of supervisors of the county that he was the owner of such animals, upon the order of said board such surplus shall be refunded to the owner.

SOURCES: Codes, 1930, § 5434; 1942, § 4857; Laws, 1926, ch. 265.

§ 69-15-325. Driving and drifting from quarantined to free county.

Any person or persons, firm or corporation, driving, conveying, transporting or allowing to drift from any state or territory, into or through this state, or within this state from a quarantined county or area into a free county or area or into a county or area in which systematic tick eradication is in progress, animals infested with or exposed to the cattle fever tick (Margaropus annulatus) shall be deemed to be in violation of the animal health laws of this state and shall be subject to the provisions of Sections 69-15-53 through 69-15-69. Nothing herein shall apply to livestock shipped through a recognized disinfecting station and accompanied by a regulation permit covering the movement therefrom.

SOURCES: Codes, 1930, § 5436; 1942, § 4859; Laws, 1926, ch. 265; Laws, 1989, ch. 449, § 15, eff from and after passage (approved March 24, 1989).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

In prosecution for moving cattle from Louisiana to Mississippi, evidence that copies of necessary Federal certificates authorizing such movement were customarily mailed to Mississippi Livestock Board, and that secretary thereof had been unable to find copy of any certificate issued to defendant, was insufficient for jury in absence of proof of any law or regulation requiring Federal authorities to file copies of Federal certificates with Mississippi Livestock Board. Calhoun v. State, 172 Miss. 559, 161 So. 297 (1935).

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 134-137.

§ 69-15-327. Duty of sheriff; penalty for failure to act.

It shall be the duty of the sheriff in any county in which the work of tick eradication is in progress, to render all livestock inspectors any assistance in the enforcement of this article and the regulations of the board of animal health. If the sheriff of any county shall neglect, fail or refuse to render this assistance when so required, he shall be guilty of a misdemeanor, and be punishable as in other cases of malfeasance or misfeasance in office.

SOURCES: Codes, 1930, § 5437; 1942, § 4860; Laws, 1926, ch. 265.

Cross References — Duty of sheriff, generally, see § 19-25-67.

§ 69-15-329. Destruction of vats.

Any person or persons who shall wilfully damage or destroy by any means, any vat erected, or in the process of being erected, as herein provided for tick eradication purposes, shall be guilty of a felony, and upon conviction shall be imprisoned not less than six months, or more than five years in the state prison.

SOURCES: Codes, 1930, § 5438; 1942, § 4861; Laws, 1926, ch. 265.

ARTICLE 9.

PENALTIES.

SEC.
69-15-331. General penalty; injunction.

§ 69-15-331. General penalty; injunction.

(1) Except as otherwise provided in the particular sections of this chapter, any person, firm or corporation violating any of the provisions of Articles 1, 3, 5 and 7 of this chapter, or any of the rules and regulations of the Board of Animal Health or interfering with any duly appointed officer of said board in the discharge of his duty, or for having discharged his duties, shall be subject to the provisions of Sections 69-15-53 through 69-15-69.

(2) When necessary to effect the purposes of this chapter, in addition to all other remedies in law or equity, the Commissioner of Agriculture and Commerce may and is hereby authorized to petition the chancery court for an injunction to prevent any violation of the provisions of this chapter, or the continuance of any such violation or to enforce compliance herewith. The chancery court is hereby vested with authority to entertain jurisdiction on any such petition to determine the cause and to issue such process as may be necessary to accomplish the purposes of this chapter.

SOURCES: Codes, 1930, § 5435; 1942, § 4858; Laws, 1926, ch. 265; Laws, 1962, ch. 166, § 3; Laws, 1981, ch. 418, § 1; Laws, 1989, ch. 449, § 16, eff from and after passage (approved March 24, 1989).

Cross References — Administrative procedures to enforce rules and regulations of Board of Animal Health, see §§ 69-15-51 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 17

Livestock Biologics, Drugs and Vaccines

Article 1. Livestock Biologics and Drug Law 69-17-1
Article 3. Tranquilizers or Drugs for Livestock 69-17-101
Article 5. Hog Cholera Virus 69-17-201

ARTICLE 1.

LIVESTOCK BIOLOGICS AND DRUG LAW.

SEC.
69-17-1. Citation of article.
69-17-3. Sale of biologics, drugs, etc., prohibited until approved by Board of Animal Health.
69-17-5. Article not applicable where preparations are dispensed by a licensed veterinarian.
69-17-7. Other exemptions.
69-17-9. Application for registration.
69-17-11. Rules and regulations.
69-17-13. Investigation and seizure of products.
69-17-15. Penalties.

§ 69-17-1. Citation of article.

This article shall be known and may be cited and referred to as the "Livestock Biologics and Drug Law of 1958."

SOURCES: Codes, 1942, § 4862-01; Laws, 1958, ch. 152, § 1, eff from and after passage (approved May 2, 1958).

§ 69-17-3. Sale of biologics, drugs, etc., prohibited until approved by Board of Animal Health.

No person, firm or corporation shall sell or offer for sale any biologics, drugs, remedies, tonics, medicine or other health preparation in the State of Mississippi designed for or to be administered to any livestock, poultry or any other animals until same has been registered with and approved for distribution by the board of animal health as herein provided for. Nothing in this article shall be construed to prevent the sale of any antibiotics by any concern to farmers or livestock owners.

SOURCES: Codes, 1942, § 4862-02; Laws, 1958, ch. 152, § 2, eff from and after passage (approved May 2, 1958).

§ 69-17-5. Article not applicable where preparations are dispensed by a licensed veterinarian.

Nothing in this article shall apply to the dispensing of biologics, drugs, remedies, tonics, medicines or preparations hereinabove referred to by a licensed veterinarian if same is delivered by the licensed practitioner in the course of his professional practice or upon his prescription.

SOURCES: Codes, 1942, § 4862-06; Laws, 1958, ch. 152, § 6, eff from and after passage (approved May 2, 1958).

§ 69-17-7. Other exemptions.

Any biologics, drugs, remedies, tonics, medicine or other preparation hereinabove referred to which are licensed or which are authorized to be sold under and in accordance with the Public Health Service Act of July 1, 1944 (58 Stat. 682; 42 U.S.C. Supp.V. 201 et seq.) or under the animal virus-serum-toxin law of March 4, 1913 (37 Stat. 832; 21 U.S.C. 151 et seq.) shall be exempt from the provisions of this article.

SOURCES: Codes, 1942, § 4862-07; Laws, 1958, ch. 152, § 7, eff from and after passage (approved May 2, 1958).

§ 69-17-9. Application for registration.

The application for registration shall be made in such form and contain such information as may be prescribed by the Board of Animal Health of the State of Mississippi and shall give in detail the composition of the preparation, the safety of its use, recommendations and directions for use, claims of effectiveness and proof of all claims, and shall include an official product label and any other evidence which the said board considers necessary in determining eligibility of registration in compliance with this article.

SOURCES: Codes, 1942, § 4862-03; Laws, 1958, ch. 152, § 3, eff from and after passage (approved May 2, 1958).

§ 69-17-11. Rules and regulations.

The said Board of Animal Health is hereby authorized and directed to promulgate rules and regulations not inconsistent with this article, which may be necessary to its effective administration.

SOURCES: Codes, 1942, § 4862-04; Laws, 1958, ch. 152, § 4, eff from and after passage (approved May 2, 1958).

§ 69-17-13. Investigation and seizure of products.

The said Board of Animal Health and its authorized representatives shall have the right to inspect, investigate, sample and seize in accordance with lawful procedure any product covered by this article.

SOURCES: Codes, 1942, § 4862-05; Laws, 1958, ch. 152, § 5, eff from and after passage (approved May 2, 1958).

§ 69-17-15. Penalties.

Any person, firm or corporation violating any provision, or provisions, of this article shall have his registration rejected or revoked, and shall be guilty of a misdemeanor and upon conviction thereof, in addition to the foregoing, may be fined not to exceed One Hundred Dollars ($100.00) or imprisoned in jail not exceeding thirty days, either or both.

SOURCES: Codes, 1942, § 4862-08; Laws, 1958, ch. 152, § 8, eff from and after passage (approved May 2, 1958).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 3.

TRANQUILIZERS OR DRUGS FOR LIVESTOCK.

SEC.

69-17-101. Registration of certain instruments.
69-17-103. Register of drugs dispensed.
69-17-105. Inspection of drugs dispensed register.
69-17-107. Penalties.

§ 69-17-101. Registration of certain instruments.

Every person, except a bona fide merchant, who owns or possesses an instrument designed to project a tranquilizer or drug by means of compressed gas, explosion, or by mechanical means, into livestock for the purpose of rendering the animal docile, by whatever name known, shall register same within thirty days with the commissioner of public safety on forms to be provided by him. Any person hereafter coming into possession of or owning such instrument shall immediately register same with the commissioner of public safety. The commissioner shall make forms available to the general public at all Mississippi Highway Safety Patrol substations.

SOURCES: Codes, 1942, § 4904-01; Laws, 1962, ch. 167, eff from and after passage (approved April 30, 1962).

Cross References — Enforcement of laws concerning theft of cattle, see § 69-29-1.

§ 69-17-103. Register of drugs dispensed.

Any person selling or dispensing tranquilizers or drugs manufactured for injection into livestock by means of an instrument identified in Section 69-17-101 for the purpose of rendering livestock docile, shall maintain a register wherein he shall enter the date such drug is sold or dispensed, the name and address of the purchaser or receiver, and the identity and quantity of said drug.

SOURCES: Codes, 1942, § 4904-01; Laws, 1962, ch. 167, eff from and after passage (approved April 30, 1962).

§ 69-17-105. Inspection of drugs dispensed register.

Any sheriff, constable, police officer, highway patrolman, or special investigator authorized under the provisions of Section 69-29-1, Mississippi Code of 1972, shall have the power to inspect the register of drugs dispensed required to be maintained by this article at a reasonable time during normal business hours of the dispenser or vendor thereof.

SOURCES: Codes, 1942, § 4904-01; Laws, 1962, ch. 167, eff from and after passage (approved April 30, 1962).

§ 69-17-107. Penalties.

Any person who shall violate any provision of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 4904-01; Laws, 1962, ch. 167, eff from and after passage (approved April 30, 1962).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 5.

HOG CHOLERA VIRUS.

SEC.
69-17-201. Restriction on possession, sale or other disposition of virus; penalty.

§ 69-17-201. Restriction on possession, sale or other disposition of virus; penalty.

(1) It shall be unlawful for any person, firm, corporation or association to have in possession or keep, sell or offer for sale, barter, exchange, give away or otherwise dispose of hog cholera virus, except at Mississippi State University of Agriculture and Applied Science and under the supervision of a licensed veterinarian and with a special written permit issued by the board of animal health. "Hog cholera virus" means an unattenuated virus administered to swine for the purpose of immunizing such swine from the disease known as hog cholera.

(2) Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-five Dollars ($25.00) nor more than Five Hundred Dollars ($500.00).

SOURCES: Codes, 1930, § 5440; 1942, § 4863; Laws, 1928, ch. 50; Laws, 1932, ch. 264; Laws, 1954, ch. 150, §§ 1, 2, eff July 1, 1954.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 19

Regulation of Professional Services

Sec.	
69-19-1.	Commissioner of Agriculture and Commerce to regulate.
69-19-3.	Persons subject; exceptions.
69-19-5.	Definitions.
69-19-7.	Person defined.
69-19-9.	License; bond; proof of insurance.
69-19-11.	Repealed.
69-19-13.	Waiver of provisions of chapter in cases of natural disaster.
69-19-15.	Penalties.

§ 69-19-1. Commissioner of Agriculture and Commerce to regulate.

The Commissioner of Agriculture and Commerce shall have the power to make rules and regulations to govern the qualifications and the practicing of persons engaged in the professional services herein defined and to prevent fraudulent practices in the said professional services. No such rule or regulation shall be effective unless and until the same shall have been approved by the advisory board created under the provisions of Section 69-25-3, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5006; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 1, eff from and after July 1, 1971.

Cross References — Pesticide application law, see §§ 69-23-101 et seq.

State Entomologist, or designee, as reviewing officer with respect to alleged violation of provisions of this chapter, see § 69-25-51.

JUDICIAL DECISIONS

1. In general.

Rule of plant board requiring that contracts between persons licensed to engage in the profession of eliminating termites from wooden buildings to provide for absolute eradication is unreasonable, where the proof is overwhelming that it is a practical impossibility in all cases to eradicate termites on the first treatment, and that it sometimes requires repeated treatments to do so. State ex rel. Corley v. Hines, 203 Miss. 60, 33 So. 2d 317 (1948).

ATTORNEY GENERAL OPINIONS

The Department of Agriculture does not have the authority to create a new license category without legislative approval. While Section 69-19-5(d) and Section 69-19-1 et seq. provide for a license for tree surgery work, the statutes do not provide for a license for a tree removal specialist only. McCarty, February 23, 1995, A.G. Op. #95-0108.

Section 69-19-1 et seq. does not require the commissioner to listen to objections of licensed tree surgeons to the licensing of other tree surgeons; however, he may in his administrative discretion listen to those objections presented either orally or in writing. McCarty, February 23, 1995, A.G. Op. #95-0108.

The regulation that contracts between pest control operators and their customers be in writing can be necessarily implied from the authority of the Department of Agriculture and Commerce to prevent fraudulent practices in the pest control profession; however, it cannot be logically implied from the pest control statutes that the department must approve the contracts used by all pest control operators in the state. Spell, November 6, 1998, A.G. Op. #98-0604.

Absent specific statutory authority, there exists no responsibility on the part of a city to enforce any state licensing requirement, including those for landscape contractors. Clark, Mar. 15, 2002, A.G. Op. #02-0104.

§ 69-19-3. Persons subject; exceptions.

This chapter shall apply only to persons soliciting work and engaged in the work defined in this chapter as a profession; but in no event shall it be construed so as to apply to any person employed by the owners or others in possession of property to work under his supervision in grafting, spraying, dusting cotton or any such work.

SOURCES: Codes, 1942, § 5011; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 6, eff from and after July 1, 1971.

§ 69-19-5. Definitions.

Professional services are defined as follows:

(a) Entomological work. Receiving fees for advice or prescriptions for the control or eradication of any insect pest or rodent. Receiving fees for actual spraying, dusting, fumigating or any other methods used for the control or eradication of any insect pest or rodent. When the majority of the income of an operation, business or individual comes from the actual operation of a farm and the sale of crops therefrom and, as a service to other farmers, these services are performed, such services shall not be included in this definition.

(b) Plant pathological work. Receiving fees for advice or prescriptions for the control or eradication of any plant disease. Receiving fees for actual spraying or any other methods used for the control or eradication of any plant disease. When the majority of the income of an operation, business or individual comes from the actual operation of a farm and the sale of crops therefrom and, as a service to other farmers, these services are performed, such services shall not be included in this definition.

(c) Horticultural and floricultural work. Receiving fees for landscaping and setting of plants or for the sale of any plants for which the seller contracts to render future services.

(d) Tree surgery work. Advertising in a local phone book, newspaper, newsletter, bulletin or other prominently displayed sign as a licensed or bonded tree surgeon and receiving compensation for any work or consultation relative to the care, pruning, cabling, bracing, topping, trimming, fertilizing, cavity work and removal of ornamental trees and shrubs in any manner. Nothing shall prevent any person from performing such services as long as their advertising does not include the description licensed or bonded.

(e) Weed control work. Receiving fees for advice or prescriptions for the control or eradication of any weed. Receiving fees for actual spraying or other methods used for the control or eradication of any plant which grows where not wanted. When the majority of the income of an operation, business or individual comes from the actual operation of a farm and the sale of crops therefrom and, as a service to other farmers, these services are performed, such services shall not be included in this definition.

(f) Soil classifying work. Receiving compensation for plotting the boundaries of soil and describing and evaluating the kinds of soil as to their behavior and response to management under various uses.

SOURCES: Codes, 1942, § 5007; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 2; Laws, 1972, ch. 378, § 1; Laws, 1979, ch. 338, § 1; Laws, 1993, ch. 414, § 1; Laws, 1995, ch. 591, § 1, eff from and after passage (approved April 7, 1995).

Cross References — Fidelity bond required for horticultural, floricultural, and soil classifying work as defined in this section, see § 69-19-9.

ATTORNEY GENERAL OPINIONS

Pursuant to Section 69-19-5 a person who is paid for his or her services to remove ornamental trees and shrubs is required to be licensed as a tree surgeon. McCarty, February 23, 1995, A.G. Op. #95-0108.

The Department of Agriculture does not have the authority to create a new license category without legislative approval. While Section 69-19-5(d) and Section 69-19-1 et seq. provide for a license for tree surgery work, the statutes do not provide for a license for a tree removal specialist only. McCarty, February 23, 1995, A.G. Op. #95-0108.

The regulation that contracts between pest control operators and their customers be in writing can be necessarily implied from the authority of the Department of Agriculture and Commerce to prevent fraudulent practices in the pest control profession; however, it cannot be logically implied from the pest control statutes that the department must approve the contracts used by all pest control operators in the state. Spell, November 6, 1998, A.G. Op. #98-0604.

§ 69-19-7. Person defined.

For the purpose of this chapter the word "person" shall be construed to mean an individual, a partnership, or a corporation.

SOURCES: Codes, 1942, § 5008; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 3, eff from and after July 1, 1971.

§ 69-19-9. License; bond; proof of insurance.

(1) Any person desiring to engage in professional services or work as herein defined shall obtain from the Commissioner of Agriculture and Commerce a license to engage in such professional work, and the application for such license shall be in writing and on such blank forms as may be required. No fee shall be required for the license. The Commissioner of Agriculture and

Commerce shall require applicants to submit statements as to training and experience in professional practice and may further require applicants to pass such tests or examinations as the commissioner may prescribe. The Commissioner of Agriculture and Commerce may require an applicant to furnish a surety bond satisfactory to him and conditioned so that the principal therein named shall conduct honestly such business in accordance with the laws and regulations of this state and shall faithfully perform all his professional service contracts. In no case shall a bond exceeding Ten Thousand Dollars ($10,000.00) be required. A copy of the bond, duly certified by the Commissioner of Agriculture and Commerce or his agent, the State Entomologist, shall be received as evidence in all of the courts of this state without further proof. Any bond issued before the effective date of this chapter shall be deemed to be effective until the expiration date stated thereon. Any person having a right of action against such person may bring suit against the principal and sureties of such bond. Should the surety furnished become unsatisfactory, such person shall execute a new bond, and should he fail to do so, it shall be the duty of the Commissioner of Agriculture and Commerce or his agent, the State Entomologist, to cancel his license and give him notice of such fact, and it shall be unlawful thereafter for such person to engage in such business without obtaining a new license.

(2) In addition to the requirements of subsection (1) of this section, the Commissioner of Agriculture and Commerce, with the approval of the Advisory Board to the Bureau of Plant Industry, may require persons providing professional services as defined in this chapter to provide satisfactory proof of insurance for personal injury and property damage incurred as a result of the negligent or careless provision of such services, including coverage for errors and omissions. Such insurance shall be in an amount determined by the advisory board, but shall not exceed Two Hundred Thousand Dollars ($200,000.00). Such insurance shall be in effect before a person may offer such professional services to the general public. Notice of cancellation or failure to renew such insurance shall be provided to the advisory board by the persons offering such professional services. The license to engage in such professional work shall be revoked if proof of insurance is not provided to the advisory board by the licensee within thirty (30) days of the notice of cancellation or failure to renew such insurance.

(3) For horticultural and floricultural work and soil classifying work, as defined in Section 69-19-5, such surety bond which may be required shall be in an amount not to exceed One Thousand Two Hundred Fifty Dollars ($1,250.00) and such insurance which may be required shall be in an amount not to exceed One Hundred Thousand Dollars ($100,000.00).

(4) No such bond and insurance shall be required from any person providing professional services as defined in this chapter if the Commissioner of Insurance certifies that such bond and insurance is not available to such person.

SOURCES: Codes, 1942, § 5009; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 4; Laws, 1992, ch. 474, § 9; Laws, 2006, ch. 427, § 1, eff from and after July 1, 2006.

Cross References — Exemption of person licensed under this section from licensing provisions of the Pesticide Application Law, see § 69-23-119.

JUDICIAL DECISIONS

1. In general.

One who conducts business of termite eradication and control in this state must first obtain license from state plant board under provisions of this section. Condon v. Snipes, 205 Miss. 306, 38 So. 2d 752 (1949).

ATTORNEY GENERAL OPINIONS

Pursuant to Section 69-19-9 a person who is paid for his or her services to remove ornamental trees and shrubs is required to be licensed as a tree surgeon. McCarty, February 23, 1995, A.G. Op. #95-0108.

There is no statute which prohibits a person who has practiced tree surgery without a license in the past from now obtaining a license to practice tree surgery. However, under Section 69-19-9 the commissioner may require applicants for a tree surgery license to submit statements as to training and experience. McCarty, February 23, 1995, A.G. Op. #95-0108.

§ 69-19-11. Repealed.

Repealed by Laws of 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997).

[Codes, 1942, § 5010; Laws, 1938, ch. 171; Laws, 1971, ch. 476, § 5.]

Editor's Note — Former § 69-19-11 provided for penalties for violations of licensing of professional services. For current provisions affecting penalties for engaging in certain professional services without a license, see § 69-19-15.

§ 69-19-13. Waiver of provisions of chapter in cases of natural disaster.

The Bureau of Plant Industry, Department of Agriculture and Commerce, in cases of natural disaster, may waive any and all provisions of this chapter.

SOURCES: Laws, 1995, ch. 591, § 2, eff from and after passage (approved April 7, 1995).

§ 69-19-15. Penalties.

(1)(a) Any person violating this chapter or the rules and regulations issued under this chapter is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), by imprisonment for not more than one (1) year, or by both such fine and imprisonment at the discretion of the court having jurisdiction.

(b) Each violation and each day's violation shall constitute a separate offense.

(c) Any person violating this chapter or the rules and regulations issued under this chapter in such a way that causes harm or poses a threat to man, animals or the environment is guilty of a felony and, upon conviction, shall be punished by a fine of not more than Twenty-five Thousand Dollars ($25,000.00) or by imprisonment in the State Penitentiary for a term of not more than twenty (20) years or by both such fine and imprisonment for each violation.

(2) Each violation of this chapter or the applicable rules and regulations shall subject the violator to administrative action as provided for in Sections 69-25-51 through 69-25-63.

SOURCES: Laws, 1997, ch. 449, § 3 eff from and after passage (approved March 25, 1997); Laws, 2005, ch. 533, § 7, eff from and after July 1, 2005.

Cross References — State Entomologist, or designee, as reviewing officer with respect to alleged violation of provisions of this chapter, see § 69-25-51.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 21

Crop Spraying and Licensing of Aerial Applicators

Article 1. Regulation of Crop Spraying by Aircraft 69-21-1
Article 3. Agriculture Aviation Licensing Law 69-21-101
Article 5. Administrative Hearing Procedure to Enforce Rules and Regulations of Board of Agricultural Aviation. [Repealed] 69-21-151

ARTICLE 1.

REGULATION OF CROP SPRAYING BY AIRCRAFT.

SEC.
69-21-1 through 69-21-27. Repealed

§§ 69-21-1 through 69-21-27. Repealed.

Repealed by Laws of 2009, ch. 515, § 18, effective from and after passage April 8, 2009.

§ 69-21-1. [Codes, 1942, § 5000-21; Laws, 1952, ch. 169, § 1; Laws, 1971, ch. 475, § 1, eff from and after July 1, 1971.]

§ 69-21-3. [Codes, 1942, § 5000-28; Laws, 1952, ch. 169, § 8, eff from and after passage (approved April 16, 1952).]

§ 69-21-5. [Codes, 1942, § 5000-22; Laws, 1952, ch. 169, § 2; Laws, 1971, ch. 475, § 2; Laws, 2005, ch. 533, § 8, eff from and after July 1, 2005.]

§ 69-21-7. [Codes, 1942, § 5000-23; Laws, 1952, ch. 169, § 3; Laws, 1962, ch. 171, § 1; Laws, 1971, ch. 475, § 3; Laws, 1992, ch. 496, § 34; Laws, 1998, ch. 385, § 1; Laws, 2005, ch. 533, § 9, eff from and after July 1, 2005.]

§ 69-21-9. [Codes, 1942, § 5000-23; Laws, 1952, ch. 169, § 3; Laws, 1962, ch. 171, § 1; Laws, 1971, ch. 475, § 3; Laws, 2005, ch. 533, § 10, eff from and after July 1, 2005.]

§ 69-21-11. [Codes, 1942, § 5000-23; Laws, 1952, ch. 169, § 3; Laws, 1962, ch. 171, § 1; Laws, 1971, ch. 475, § 3, eff from and after July 1, 1971.]

§ 69-21-13. [Codes, 1942, § 5000-23; Laws, 1952, ch. 169, § 3; Laws, 1962, ch. 171, § 1; Laws, 1971, ch. 475, § 3; Laws, 2005, ch. 533, § 11, eff from and after July 1, 2005.]

§ 69-21-15. [Codes, 1942, § 5000-23; Laws, 1952, ch. 169, § 3; Laws, 1962, ch. 171, § 1; Laws, 1971, ch. 475, § 3, eff from and after July 1, 1971.]

§ 69-21-17. [Codes, 1942, § 5000-25; Laws, 1952, ch. 169, § 5; Laws, 1971, ch. 475, § 5, eff from and after July 1, 1971.]

§ 69-21-19. [Codes, 1942, § 5000-24; Laws, 1952, ch. 169, § 4; Laws, 1971, ch. 475, § 4, eff from and after July 1, 1971.]

§ 69-21-21. [Codes, 1942, § 5000-26; Laws, 1952, ch. 169, § 6; Laws, 1971, ch. 475, § 6, eff from and after July 1, 1971.]

§ 69-21-23. [Codes, 1942, § 5000-30; Laws, 1952, ch. 169, § 10; Laws, 1971, ch. 475, § 8, eff from and after July 1, 1971.]

§ 69-21-25. [Codes, 1942, § 5000-29; Laws, 1952, ch. 169, § 9; Laws, 1971, ch. 475, § 7; Laws, 2005, ch. 533, § 12, eff from and after July 1, 2005.]

§ 69-21-27. [Codes, 1942, § 5000-27; Laws, 1952, ch. 169, § 7, eff from and after passage (approved April 16, 1952).]

Editor's Note — Former § 69-21-1 stated that the purpose of Article 1 of this chapter was to regulate the application of any hormone-type herbicide applied by aircraft. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-3 provided that Article 1 of this chapter did not apply to manual application of herbicides. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-5 provided definitions of terms used in Article 1 of this chapter. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-7 provided that persons could not apply hormone-type herbicides by aircraft without a license. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-9 related to the suspension, revocation or modification of licenses. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-11 related to appointment of secretary of state as agent for process by nonresident applicants and license without examination under certain circumstances for nonresidents. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-13 related to the requirement that permit holder furnish security and actions for damages. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-15 related to allegations and proof in action for damages. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-17 related to certain records and reports to be maintained and furnished. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-19 related to the regulation of materials or methods in application of hormone-type herbicides. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-21 authorized the commissioner to make rules and regulations and establish minimum standards. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-23 related to cooperation with the state or federal government to carry out provisions of article. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-25 related to enforcement provisions. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

Former § 69-21-27 provided penalties for violations of the article. For present similar provisions relating to aerial application of pesticides, poisons, seeds, fertilizer and chemicals, see §§ 69-21-101 et seq.

ARTICLE 3.

AGRICULTURE AVIATION LICENSING LAW.

SEC.
69-21-101. Title of article.

69-21-103. Declaration of purpose.
69-21-105. Definitions.
69-21-107. Repealed.
69-21-109. Powers and duties of department.
69-21-111. Repealed.
69-21-113. Licensing of applicators and pilots; application; renewal.
69-21-115. Financial responsibility.
69-21-117. Licensing of nonresident applicators and pilots; reciprocity with other states.
69-21-119. Fees for licenses.
69-21-121. Disciplinary action against licensee.
69-21-123. Repealed.
69-21-125. Penalties for violations; injunctive relief to prevent violations.
69-21-126. Licensees required to maintain and furnish records and reports regarding certain activities.
69-21-127. Repealed
69-21-128. Registration of aircraft used for aerial application of agricultural substances.
69-21-129 through 69-2-141. Repealed

§ 69-21-101. Title of article.

This article shall be known and cited as the "Agricultural Aviation Licensing Law of 2009."

SOURCES: Codes, 1942, § 5011-01; Laws, 1966, ch. 239, § 1; reenacted, Laws, 1983, ch. 304, § 1; reenacted, Laws, 1991, ch. 391, § 1; reenacted without change, Laws, 1996, ch. 447, § 1; reenacted without change, Laws, 1997, ch. 468, § 1; Laws, 2002, ch. 301, § 1; reenacted without change, Laws, 2004, ch. 514, § 1; reenacted without change, Laws, 2006, ch. 494, § 1; reenacted , Laws, 2009, ch. 515, § 1, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Laws of 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed on December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 1, effective from and after April 8, 2009.

Cross References — Pesticide Application Law, see §§ 69-23-101 et seq.

Federal Aspects — Commercial aerial application regulation program created under the Federal Insecticide, Fungicide and Redenticide Act, see 7 USCS §§ 136 through 136y.

ATTORNEY GENERAL OPINIONS

The Board of Agricultural Aviation has authority over the aerial application of chemicals and pesticides in Mississippi, except for the aerial application of hormone-type herbicides, which fall under the jurisdiction of the Agriculture Department. Chisolm, July 16, 2004, A.G. Op. 04-0281.

RESEARCH REFERENCES

ALR. Anticompetitive covenants: aerial spray dust business. 60 A.L.R.4th 965.

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 69-21-103. Declaration of purpose.

The purpose of this article is to supervise and regulate for the public good all commercial aerial application within the State of Mississippi, to establish and promote a close working relationship between the agricultural aviation industry and the Mississippi Department of Agriculture and Commerce, and to regulate the licensing of all persons, including pilots, engaged in the aerial application of pesticides, poisons, seeds, fertilizer and chemicals and to require the registration of all commercial agricultural aircraft.

SOURCES: Codes, 1942, § 5011-02; Laws, 1966, ch. 239, § 2; Laws, 1972, ch. 369, § 8; Laws, 1980, ch. 482, § 1; reenacted, Laws, 1983, ch. 304, § 2; reenacted, Laws, 1991, ch. 391, § 2; Laws, 1991, ch. 530, § 10; reenacted without change, Laws, 1996, ch. 447, § 2; reenacted without change, Laws, 1997, ch. 468, § 2; Laws, 2002, ch. 301, § 2; reenacted without change, Laws, 2004, ch. 514, § 2; reenacted without change, Laws, 2006, ch. 494, § 2; reenacted, Laws, 2009, ch. 515, § 2, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Laws of 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed on December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 1, effective from and after April 8, 2009.

Cross References — Administrative hearing procedure to enforce rules and regulations of Board of Agricultural Aviation, see §§ 69-21-151 et seq.

Federal Aspects — Commercial aerial application regulation program created under the Federal Insecticide, Fungicide and Rodenticide Act, see 7 USCS §§ 136 through 136y.

§ 69-21-105. Definitions.

As used in this article, the following terms shall have the meanings hereinafter ascribed to them:

(a) "Aerial application" means the practice of engaging in agricultural aircraft operations.

(b) "Agricultural aircraft operation" means:

(i) Dispensing any pesticide, seed, poison, chemical or fertilizer by aircraft;

(ii) Dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life or pest control by aircraft; or

(iii) Engaging in dispensing activities directly affecting agriculture, horticulture or forest preservation by aircraft.

(c) "Agricultural substance" means any seed, fertilizer or pesticide that is used, applied, sprayed or administered in an agricultural, horticultural or forestry setting.

(d) "Aircraft" means any contrivance now known or hereafter invented that is used or designed for navigation of or flight in the air over land and water, and that is designed for or adaptable for use in agricultural aircraft operation.

(e) "Applicator" means any person, as defined in this section, who is licensed under this article to engage in the business of agricultural aircraft operations; who may or may not be a pilot.

(f) "Commissioner" means the Commissioner of the Mississippi Department of Agriculture and Commerce.

(g) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(h) "Department" means the Mississippi Department of Agriculture and Commerce.

(i) "Desiccant" means any substances or mixtures of substances intended for artificially accelerating the drying of plant tissues.

(j) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the Class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs and flies; and to other classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example, spiders, mites, ticks, centipedes and wood lice.

(k) "Person" shall mean any individual, corporation, firm, partnership, company, trust, association or other legal entity.

(*l*) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, mitigating or attracting any pests; and shall also include adjuvants intended to enhance the effectiveness of pesticides; and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(m) "Pilot" means the operator of an aircraft used in agricultural aircraft operation; however, a pilot may also be a person who is licensed as an applicator under the provisions of this article.

SOURCES: Codes, 1942, § 5011-03; Laws, 1966, ch. 239, § 3; Laws, 1980, ch. 482, § 2; reenacted, Laws, 1983, ch. 304, § 3; reenacted, Laws, 1991, ch. 391, § 3; reenacted without change, Laws, 1996, ch. 447, § 3; reenacted without change, Laws, 1997, ch. 468, § 3; Laws, 2002, ch. 301, § 3; reenacted without change, Laws, 2004, ch. 514, § 3; reenacted without change, Laws, 2006, ch. 494, § 3; reenacted, Laws, 2009, ch. 515, § 3, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Laws of 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 3, effective from and after April 8, 2009.

Cross References — Administrative hearing procedure to enforce rules and regulations of Board of Agricultural Aviation, see §§ 69-21-151 et seq.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 69-21-107. Repealed.

Repealed by operation of law, effective June 30, 2008, by former Section 69-21-127.

§ 69-21-107. [Codes, 1942, § 5011-04; Laws, 1966, ch. 239, § 4; Laws, 1972, ch. 369, § 9; Laws, 1980, ch. 482, § 3; ch. 560, § 26; reenacted and amended, Laws, 1983, ch. 304, § 4; reenacted, Laws, 1991, ch. 391, § 4; Laws, 1991, ch. 530, § 11; reenacted without change, Laws, 1996, ch. 447, § 4; reenacted without change, Laws, 1997, ch. 468, § 4; Laws, 2002, ch. 301, § 4; reenacted without change, Laws, 2004, ch. 514, § 4; reenacted without change, Laws, 2006, ch. 494, § 4, eff from and after passage (approved Mar. 27, 2006.)]

Cross References — Traveling expenses of state officers and employees, generally, see § 25-3-41.

Provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

§ 69-21-109. Powers and duties of department.

(1) The department may adopt any rules and regulations as may be necessary or desirable to implement the provisions of this article, to control and regulate the aerial application of agricultural substances in this state, and to restrict the use of any agricultural substances that create hazards to the health, safety and welfare of the citizens of Mississippi. The department shall establish by regulation professional standards for applicators and pilots in the interest of the safety, welfare and general well-being of the citizens of Mississippi and for the protection of the state's fish and wildlife, air, water and soil. No rule or regulation adopted under the terms of this article shall be effective unless it has first been submitted to and approved by the Advisory Board of the Bureau of Plant Industry, a division of the department, established in Section 69-25-3.

(2) The department is authorized to procure samples of agricultural substances before and after they are mixed for testing purposes.

(3) The department is authorized to maintain an office and employ necessary personnel within its budget to carry out the purposes of this article.

(4) It shall be the duty of the department and the department shall have the authority, to enforce this article and all rules and regulations made and adopted in compliance with this article. The department shall not have jurisdiction to determine liability between private parties.

(5) The department's representatives shall have the authority to enter into any premises where there is reason to believe that an agricultural substance is being or has been applied by a pilot or any applicator's office or place of operations or where he is preparing to apply any of the materials

herein stated, for the purpose of enforcement of this article. The department shall have authority to inspect all aircraft and equipment found on the premises, to take samples of any agricultural substances and to inspect and copy any records found on the premises.

(6) The department may cooperate with or enter into formal cooperative agreements with any public or private agency or educational institution of this state or any other state or federal agency for the purpose of carrying out the provisions of this article.

SOURCES: Codes, 1942, § 5011-05; Laws, 1966, ch. 239, § 5; Laws, 1972, ch. 369, § 10; Laws, 1980, ch. 482, § 4; reenacted, Laws, 1983, ch. 304, § 5; reenacted, Laws, 1991, ch. 391, § 5; Laws, 1991, ch. 530, § 12; Laws, 1992, ch. 496, § 35; reenacted without change, Laws, 1996, ch. 447, § 5; reenacted without change, Laws, 1997, ch. 468, § 5; Laws, 2002, ch. 301, § 5; reenacted without change, Laws, 2004, ch. 514, § 5; reenacted without change, Laws, 2006, ch. 494, § 5; reenacted, Laws, 2009, ch. 515, § 4, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Laws of 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 4, effective from and after April 8, 2009.

ATTORNEY GENERAL OPINIONS

The Board of Agricultural Aviation has authority over the aerial application of chemicals and pesticides in Mississippi, except for the aerial application of hormone-type herbicides, which fall under the jurisdiction of the Agriculture Department. Chisolm, July 16, 2004, A.G. Op. 04-0281.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 69-21-111. Repealed.

Repealed by operation of law, effective June 30, 2008, by former Section 69-21-127.

§ 69-21-111. [Codes, 1942, § 5011-08; Laws, 1966, ch. 239, § 8; Laws, 1972, ch. 369, § 11; reenacted, Laws, 1983, ch. 304, § 6; reenacted, Laws, 1991, ch. 391, § 6; Laws, 1991, ch. 530, § 13; reenacted without change, Laws, 1996, ch. 447, § 6; reenacted without change, Laws, 1997, ch. 468, § 6; reenacted without change, Laws, 1999, ch. 387, § 6; reenacted without change, Laws, 2006, ch. 494, § 6, eff from and after passage (approved Mar. 27, 2006.)]

Editor's Note — Laws, 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

§ 69-21-113. Licensing of applicators and pilots; application; renewal.

(1) There shall be a license for an applicator and a separate and distinct license for a pilot. It is unlawful for any person to act, operate or do business as an applicator or pilot, or to engage in agricultural aircraft operations, unless that person has the appropriate applicator's or pilot's license issued by the department. Applicator's or pilot's licenses shall only be issued upon application to the department, payment of application fees and meeting any other requirements set by regulation or law. The application shall contain information regarding the applicant's qualifications and proposed operations, and any other information as may be specified by the department. All applicants for a pilot's license must have appropriate Federal Aviation Administration certification.

(2) Applicator's and pilot's licenses are not transferable. Licenses shall be effective for the period prescribed by regulation of the department. Any licensee wishing to have a license renewed must submit an application for renewal with the department at least thirty (30) days before the expiration of the license. If the applicant submits a timely and complete application for renewal, and the department, through no fault of the applicant, fails to reissue the license on or before the expiration date of the existing license, the existing license shall remain in effect until final action on the renewal application is taken by the department. Licenses are subject to modification, revocation or suspension for cause at any time during the effective dates of the license, subject to constitutional requirements.

(3) Any person seeking to obtain a license as an applicator in this state shall submit with his application proof of payment of all ad valorem and other taxes that may be applicable on the applicant's aircraft and other equipment.

(4) All persons licensed under this article shall be known as registered applicators or pilots, and shall be issued a certificate by the department as proof of registration.

SOURCES: Codes, 1942, § 5011-06; Laws, 1966, ch. 239, § 6; Laws, 1980, ch. 482, § 5; reenacted, Laws, 1983, ch. 304, § 7; reenacted, Laws, 1991, ch. 391, § 7; reenacted without change, Laws, 1996, ch. 447, § 7; reenacted without change, Laws, 1997, ch. 468, § 7; Laws, 2002, ch. 301, § 6; reenacted without change, Laws, 2004, ch. 514, § 6; reenacted without change, Laws, 2006, ch. 494, § 7; reenacted, Laws, 2009, ch. 515, § 5, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Laws of 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 5, effective from and after April 8, 2009.

Cross References — Exemption of aircraft regulated by the Agricultural Aviation Board of the State of Mississippi from registration requirements, see § 61-15-5.

Administrative hearing procedure to enforce rules and regulations of Board of Agricultural Aviation, see §§ 69-21-151 et seq.

ATTORNEY GENERAL OPINIONS

If an applicators license was issued to the individual, the license remains valid upon the sale of the agricultural aircraft operation business. Provine, July 28, 2006, A.G. Op. 06-0328.

§ 69-21-115. Financial responsibility.

Any person seeking to obtain a license as an applicator in this state shall submit proof of financial responsibility to the department, and upon obtaining a license, the person shall maintain proof of financial responsibility at all times while the license shall be in effect. Proof of financial responsibility shall be established by:

(a) Depositing with the department a surety bond in favor of any person or persons who may suffer damage by reason of the operation of an aerial application service, issued by a corporate surety company authorized to do business in this state, which surety bond shall be in an amount not less than the amount of financial responsibility required by the rules and regulations of the department. However, the aggregate liability of the surety to all such persons shall not, in any event, exceed the amount of the bond; or

(b) The filing of a general liability insurance policy issued by an insurance company authorized to do business in this state insuring the licensee and any of his agents against liability resulting from the operation of an agricultural aviation service, which insurance policy shall be in an amount deemed as acceptable to the department, as follows:

(i) Not less than One Hundred Thousand Dollars ($100,000.00) for personal injury;

(ii) Not less than Three Hundred Thousand Dollars ($300,000.00) in the aggregate for multiple injuries; and

(iii) Not less than One Hundred Thousand Dollars ($100,000.00) for property damage.

The department shall establish by rules and regulations the amount of financial responsibility to be required of each licensed applicator, but in no event shall the amount of financial responsibility required be less than the amounts prescribed in paragraph (b) of this section.

SOURCES: Codes, 1942, § 5011-07; Laws, 1966, ch. 239, § 7; reenacted, Laws, 1983, ch. 304, § 8; reenacted, Laws, 1991, ch. 391, § 8; reenacted without change, Laws, 1996, ch. 447, § 8; reenacted without change, Laws, 1997, ch. 468, § 8; reenacted without change, Laws, 1999, ch. 387, § 8; reenacted without change, Laws, 2006, ch. 494, § 8; reenacted, Laws, 2009, ch. 515, § 6, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Laws of 1999, ch. 387, § 14, provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 6, effective from and after April 8, 2009.

§ 69-21-117. Licensing of nonresident applicators and pilots; reciprocity with other states.

(1) Any person who is a nonresident of this state and who intends to perform agricultural aircraft operations in this state as an applicator or pilot shall obtain the appropriate applicator's or pilot's license under this article and comply with all the other licensing requirements for a resident licensee. Nonresident applicators shall also designate and maintain a resident agent in this state for service of process.

(2) Any person who is duly licensed as an agricultural aviation pilot in another state, whose requirements for licensure as an agricultural aviation pilot are at least equal to those of this state, may be granted an agricultural aviation pilot's license by this state upon the submission of the required application, provided the laws of the state from which the applicant comes grant similar privileges to applicants from this state. The department is authorized to enter into a reciprocity agreement with any state meeting the qualifications of this subsection.

SOURCES: Codes, 1942, § 5011-09; Laws, 1966, ch. 239, § 9; reenacted, Laws, 1983, ch. 304, § 9; reenacted, Laws, 1991, ch. 391, § 9; reenacted without change, Laws, 1996, ch. 447, § 9; reenacted without change, Laws, 1997, ch. 468, § 9; Laws, 2002, ch. 301, § 7; reenacted without change, Laws, 2004, ch. 514, § 7; reenacted without change, Laws, 2006, ch. 494, § 9; reenacted, Laws, 2009, ch. 515, § 7, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Laws of 1999, ch. 387, § 14 provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 7, effective from and after April 8, 2009.

§ 69-21-119. Fees for licenses.

(1) A fee of not more than Five Hundred Dollars ($500.00) for each aircraft owned, operated, used and employed in aerial application by an applicator shall be paid to the department for the issuance or required renewal of a license for an applicator. Each aircraft shall be identified at all times by a device supplied to the registered applicator by the department.

(2) A fee of not more than Two Hundred Fifty Dollars ($250.00) for each pilot engaged in aerial application shall be paid to the department for the issuance or required renewal of a license for a pilot. Each pilot shall have in his possession at all times an identification card supplied by the department.

(3) All of the fees collected under this section shall be deposited in a special fund in the Treasury of the State of Mississippi and subject to appropriation by the Mississippi Legislature. The fees shall be used by the department for the administration and enforcement of this article.

SOURCES: Codes, 1942, § 5011-10; Laws, 1966, ch. 239, § 10; Laws, 1980, ch. 482, § 6; reenacted, Laws, 1983, ch. 304, § 10; reenacted, Laws, 1991, ch. 391, § 10; Laws, 1992, ch. 437, § 1; reenacted without change, Laws, 1996, ch. 447, § 10; reenacted without change, Laws, 1997, ch. 468, § 10; reenacted without change, Laws, 1999, ch. 387, § 10; Laws, 2000, ch. 329, § 1; Laws, 2002, ch. 301, § 8; reenacted without change, Laws, 2004, ch. 514, § 8; reenacted without change, Laws, 2006, ch. 494, § 10; reenacted, Laws, 2009, ch. 515, § 8, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 8, effective from and after April 8, 2009.

Laws of 1999, ch. 387, § 14 provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

Cross References — Examination of records of various boards generally, see § 7-7-69.

Certification and licensing of aircraft and pilots in general, see §§ 61-11-1 et seq.

Exemption of aircraft regulated by the Agricultural Aviation Board of the State of Mississippi from registration requirements, see § 61-15-5.

§ 69-21-121. Disciplinary action against licensee.

Any person found by the department to have violated any of the provisions of this article, any rule, regulation or written order of the department or any condition or limitation of a license issued by the department shall be subject to disciplinary action. Disciplinary matters shall be conducted as administrative proceedings under Sections 69-25-51 through 69-25-63. Any person found guilty of a violation shall be subject to the administrative or civil penalties as provided by Section 69-25-51.

SOURCES: Codes, 1942, § 5011-11; Laws, 1966, ch. 239, § 11; Laws, 1980, ch. 482, § 7; reenacted, Laws, 1983, ch. 304, § 11; reenacted, Laws, 1991, ch. 391, § 11; reenacted without change, Laws, 1996, ch. 447, § 11; reenacted without change, Laws, 1997, ch. 468, § 11; Laws, 2002, ch. 301, § 9; reenacted without change, Laws, 2004, ch. 514, § 9; reenacted without change, Laws, 2006, ch. 494, § 11; reenacted, Laws, 2009, ch. 515, § 9, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 9, effective from and after April 8, 2009.

Laws of 1999, ch. 387, § 14 provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

RESEARCH REFERENCES

ALR. Revocation or suspension of airman's license or certificate. 78 A.L.R.2d 1150.

§ 69-21-123. Repealed.

Repealed by operation of law, effective June 30, 2008, by former Section 69-21-127.

§ 69-21-123. [Codes, 1942, § 5011-13; Laws, 1966, ch. 239, § 13; Laws, 1972, ch. 369, § 12; Laws, 1980, ch. 482, § 8; reenacted, Laws, 1983, ch. 304, § 12; reenacted, Laws, 1991, ch. 391, § 12; Laws, 1991, ch. 530, § 14; reenacted without change, Laws, 1996, ch. 447, § 12; reenacted without change, Laws, 1997, ch. 468, § 12; reenacted without change, Laws, 1999, ch. 387, § 12; reenacted without change, Laws, 2006, ch. 494, § 12, eff from and after passage (approved Mar. 27, 2006.)]

Editor's Note — Laws, 1999, ch. 387, § 14 provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

JUDICIAL DECISIONS

1. In general.

Under substantial compliance rule, failure by injured person to give written notice to state Department of Agriculture, landowner or lessee of land, and applicator, will not be considered fatally defective to bringing negligence action for spray-drift from aerial application, so long as state Department of Agriculture is notified in writing in accordance with notice of claim limitations period for bringing action. Evans v. Boyle Flying Serv., Inc., 680 So. 2d 821 (Miss. 1996).

Notice pursuant to statute of limitations for bringing action for damages for negligent aerial application must be in writing where given to state Department of Agriculture, and should be in writing to others, but may be given orally to others. Evans v. Boyle Flying Serv., Inc., 680 So. 2d 821 (Miss. 1996).

Notice of claim limitation period for bringing negligence action arising from spray-drift from aerial application begins to run on date claimant knew or reasonably should have known of damage from spray; in event spray-drift damage is alleged to growing crops, notice must be given within 60 days form date claimant know or reasonably should have known of damage and prior to harvesting of 25% of allegedly damaged crop, whichever occurs first. Evans v. Boyle Flying Serv., Inc., 680 So. 2d 821 (Miss. 1996).

Notice of claim limitation period for bringing negligence action arising from spray-drift from aerial application began to run during time when property owners discovered that their trees were dying. Evans v. Boyle Flying Serv., Inc., 680 So. 2d 821 (Miss. 1996).

RESEARCH REFERENCES

ALR. Liability for injury caused by spraying or dusting of crops. 37 A.L.R.3d 833.

Federal preemption of state common-law products liability claims pertaining to pesticides. 101 A.L.R. Fed. 887.

Am Jur. 3 Am. Jur. 2d, Agriculture § 47.

9 Am. Jur. Proof of Facts 2d, Crop Duster's Failure to Exercise Care in Spraying Crops, §§ 7 et seq. (proof of crop duster's liability for negligence in spraying operations).

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 69-21-125. Penalties for violations; injunctive relief to prevent violations.

(1) Violation of this article, the rules and regulations adopted by the department, a condition included in a license issued by the department or an order issued by the department shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both fine and imprisonment.

(2) The department shall have the authority to file in any court of competent jurisdiction injunctive proceedings against any person violating the provisions of this article or the rules and regulations promulgated by the department for the administration and enforcement of this article.

SOURCES: Codes, 1942, § 5011-12; Laws, 1966, ch. 239, § 12; Laws, 1974, ch. 419; reenacted, Laws, 1983, ch. 304, § 13; reenacted, Laws, 1991, ch. 391, § 13; reenacted without change, Laws, 1996, ch. 447, § 13; reenacted without change, Laws, 1997, ch. 468, § 13; Laws, 2002, ch. 301, § 10; reenacted without change, Laws, 2004, ch. 514, § 10; reenacted without change, Laws, 2006, ch. 494, § 13; reenacted, Laws, 2009, ch. 515, § 10, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1999, ch. 387, § 14 provides:

"SECTION 14. Sections 69-21-101 through 69-21-125, Mississippi Code of 1972, which create the State Board of Agricultural Aviation and prescribe its duties and powers, shall stand repealed as of December 31, 2004."

This section was repealed by operation of law, effective June 30, 2008, and was reenacted by Laws of 2009, ch. 515, § 10, effective from and after April 8, 2009.

Cross References — Administrative hearing procedure to enforce rules and regulations of Board of Agricultural Aviation, see §§ 69-21-151 et seq.

Penalty assessed by Board of Agricultural Aviation for violating rules and regulations, see § 69-21-165.

Administrative hearing procedure for Bureau of Plant Industry not applicable to aerial applicators licensed under Agricultural Aviation Licensing Law of 1966, see § 69-25-65.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 69-21-126. Licensees required to maintain and furnish records and reports regarding certain activities.

The department may require any holder of an applicator's or pilot's license to maintain records and furnish reports giving any information with respect to the licensee's purchase and application of any agricultural substances and any other aspect of the licensee's activities under this article.

SOURCES: Laws, 2009, ch. 515, § 11, eff from and after passage (approved Apr. 8, 2009.)

§ 69-21-127. Repealed.

Repealed by Laws of 2009, ch. 515, § 20, effective from and after April 8, 2009.

§ 69-21-127. [Laws, 1979, ch. 301, § 17; ch. 357, § 3; Laws, 1983, ch. 304, § 14; Laws, 1991, ch. 391, § 14; Laws, 1996, ch. 447, § 14; Laws, 1997, ch. 468, § 14; Laws, 2002, ch. 301, § 11; Laws, 2004, ch. 514, § 11; Laws, 2006, ch. 375, § 1; Laws, 2006, ch. 494, § 14, eff from and after passage (approved Mar. 27, 2006.)]

Editor's Note — Former § 69-21-127 provided for the repeal of §§ 69-21-101 through 69-21-125, Mississippi Code of 1972, which created the State Board of Agricultural Aviation and prescribed its duties and powers.

§ 69-21-128. Registration of aircraft used for aerial application of agricultural substances.

All aircraft being used for the aerial application of agricultural substances in this state must be registered with the department. Registration shall be valid for a period of time established by rules and regulation.

SOURCES: Laws, 2009, ch. 515, § 12, eff from and after passage (approved Apr. 8, 2009.)

§§ 69-21-129 through 69-21-141. Repealed.

Repealed by Laws of 2009, ch. 515, § 19, effective upon and after passage April 8, 2009.

§ 69-21-129. [Laws, 2002, ch. 301, § 12, eff from and after passage (approved Jan. 31, 2002.)]

§ 69-21-131. [Laws, 2002, ch. 301, § 13, eff from and after passage (approved Jan. 31, 2002.)]

§ 69-21-133. [Laws, 2002, ch. 301, § 14, eff from and after passage (approved Jan. 31, 2002.)]

§ 69-21-135. [Laws, 2002, ch. 301, § 15, eff from and after passage (approved Jan. 31, 2002.)]

§ 69-21-137. [Laws, 2002, ch. 301, § 16, eff from and after passage (approved Jan. 31, 2002.)]

§ 69-21-139. [Laws, 2002, ch. 301, § 17, eff from and after passage (approved Jan. 31, 2002.)]

§ 69-21-141. [Laws, 2002, ch. 301, § 18, eff from and after passage (approved Jan. 31, 2002.)]

Editor's Note — Former § 69-21-129 related to notice and hearing for alleged violators of article provisions. For present similar provisions, see §§ 69-21-101 et seq.

Former § 69-21-131 related to the jurisdiction of the Board of Agricultural Aviation and the adoption of rules and regulations. For present similar provisions, see §§ 69-21-101 et seq.

Former § 69-21-133 provided for judicial review of board decisions. For present similar provisions, see §§ 69-21-101 et seq.

Former § 69-21-135 related to civil penalties for violations of board rules and regulations. For present similar provisions, see §§ 69-21-101 et seq.

Former § 69-21-137 related to the payment of penalties, attorney's fees, and court costs. For present similar provisions, see §§ 69-21-101 et seq.

Former § 69-21-139 required that the Board comply with the Open Meetings Act, Public Records Act, and Administrative Procedures Law.

Former § 69-21-141 provided that the Attorney General would act as counsel and attorney for board.

ARTICLE 5.

ADMINISTRATIVE HEARING PROCEDURE TO ENFORCE RULES AND REGULATIONS OF BOARD OF AGRICULTURAL AVIATION

[REPEALED].

SEC.
69-21-151 through 69-21-165. Repealed.

§§ 69-21-151 through 69-21-165. Repealed.

Repealed by Laws of 2002, ch. 301, § 19, eff from and after January 31, 2002.

§ 69-21-151. [Laws, 1990, ch. 392, § 1, eff from and after July 1, 1990.]

§ 69-21-153. [Laws, 1990, ch. 392, § 2; Laws, 1997, ch. 468, § 15, eff from and after July 1, 1997.]

§ 69-21-155. [Laws, 1990, ch. 392, § 3; Laws, 1997, ch. 468, § 16, eff from and after July 1, 1997.]

§ 69-21-157. [Laws, 1990, ch. 392, § 4; Laws, 1997, ch. 468, § 17, eff from and after July 1, 1997.]

§ 69-21-159. [Laws, 1990, ch. 392, § 5, eff from and after July 1, 1990.]

§ 69-21-161. [Laws, 1990, ch. 392, § 6, eff from and after July 1, 1990.]

§ 69-21-163. [Laws, 1990, ch. 392, § 7, eff from and after July 1, 1990.]

§ 69-21-165. [Laws, 1990, ch. 392, § 8; Laws, 1997, ch. 468, § 18, eff from and after July 1, 1997.]

Editor's Note — Former § 69-21-151 was entitled: Purpose of article.

Former § 69-21-153 was entitled: Review of allegation or charge for violating rules and regulations.

Former § 69-21-155 was entitled: Hearing; continuance; court reporter; oath; witnesses; written opinion; notice to violator.

Former § 69-21-157 was entitled: Waiver of right to hearing; assessment of penalties.

Former § 69-21-159 was entitled: Jurisdiction.

Former § 69-21-161 was entitled: Judicial review of Board's decision.

Former § 69-21-163 was entitled: Penalties.

Former § 69-21-165 was entitled: Payment of penalty; attorney's fees; costs.

CHAPTER 23

Mississippi Pesticide Law

General Provisions 69-23-1
Pesticide Application 69-23-101
Mississippi Waste Pesticide Disposal Act of 1993. [Repealed] 69-23-301

GENERAL PROVISIONS

Sec.
69-23-1. Title of chapter.
69-23-3. Definitions.
69-23-5. Prohibited acts; application of Trade Secrets Act.
69-23-7. Registration.
69-23-8. Fee rebate for pesticide manufacturers benefiting employment in Mississippi.
69-23-9. Determinations; rules and regulations; uniformity.
69-23-11. Enforcement.
69-23-13. Jurisdiction of commissioner.
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69-23-17. Cooperation.
69-23-19. Repealed.
69-23-21. Seizures.
69-23-23. Nonresidents to designate Secretary of State as agent for service of process; bond, when required.
69-23-25. Experimental use permits.
69-23-27. Licensing of pesticide dealers.
69-23-29. Penalties.

§ 69-23-1. Title of chapter.

This chapter shall be known and cited as the Mississippi Pesticide Law of 1975.

SOURCES: Codes, 1942, § 5000-01; Laws, 1950, ch. 452, § 1; Laws, 1975, ch. 319, § 3, eff from and after July 1, 1975.

Cross References — Regulation of drugs, generally, see §§ 41-29-1 et seq.

Pesticide Application Law, see § 69-23-101 et seq.

State Entomologist or designee as reviewing officer with respect to alleged violations of provisions of this chapter, see § 69-25-51.

Regulation of poisons, generally, see §§ 97-27-21 et seq.

JUDICIAL DECISIONS

1. In general.

Ordinance adopted by town pursuant to police power, requiring permit for application of pesticide to public land, was not pre-empted by Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS §§ 136-136y), because (1) language of FIFRA did not explicitly pre-empt local regulation and provided no clear and manifest indication that Congress sought to supplant local authority over pesticide regulation impliedly, (2) legislative history was at best ambiguous, and (3) there was no actual conflict either between

FIFRA in the ordinance or between FIFRA and local regulation generally. Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597, 111 S. Ct. 2476, 115 L. Ed. 2d 532 (1991).

In products liability suit decided under Arkansas law, evidence permitted jury finding that herbicide applied on plaintiff's farm to control various pest-grasses in soybean fields was not defective. Yellow Bayou Plantation, Inc. v. Shell Chem., Inc., 491 F.2d 1239 (5th Cir. 1974).

§ 69-23-3. Definitions.

Definitions for the purpose of this chapter:

(a) The term "pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, mitigating or attracting any pests; and shall also include adjuvants intended to enhance the effectiveness of pesticides; and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(b) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, mitigating or attracting insects which may be present in any environment whatsoever.

(c) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

(d) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animals which the commissioner shall declare to be pests.

(e) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(f) The term "adjuvant" means any substance that, when added to a pesticide is intended to aid, modify or enhance its effectiveness by its properties of serving as a wetting agent, detergent, spreading agent, synergist, deposit builder, adhesive, surfactant, emulsifying agent, deflocculating agent, water modified, or similar agent, with or without toxic properties of its own, and when sold in a package or container separate from that of the pesticide with which it is to be used.

(g) The term "nematicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes.

(h) The term "plant regulator" means any substance or mixture of substances intended through physiological action, for accelerating the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants, or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(i) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(j) The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(k) The term "disinfectant" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating bacteria or other harmful microorganisms; or otherwise frees from infection; commonly applied to inanimate objects.

(*l*) The term "bactericide" means a substance capable of destroying a given species of vegetative bacteria but not necessarily capable of destroying bacterial spores.

(m) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms as, for example, beetles, bugs, bees, flies, and to other allied classes of orthropods whose members are wingless and usually have more than six (6) legs as, for example, spiders, mites, ticks, centipedes, and wood lice.

(n) The term "nematodes" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(o) The term "fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria except those on or in living man or other animals, and those in or on processed food, beverages or pharmaceuticals.

(p) The term "weed" means any plant which grows where not wanted.

(q) The term "ingredient statement" means:

(i) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients in the pesticide;

(ii) When the pesticide contains arsenic in any form, the ingredient statement shall also include the percentages of total and water soluble arsenic, each calculated as elemental arsenic;

(iii) In the case of spray adjuvants, the ingredient statement need contain only the names of the functioning agents and the total percentage of the constituents ineffective as spray adjuvants.

(r) The term "active ingredient" means:

(i) In the case of a pesticide other than a plant regulator, defoliant or desiccant an ingredient which will prevent, destroy, repel, attract or mitigate insects, nematodes, fungi, rodents, weeds or other pests;

(ii) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(iii) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(iv) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue;

(v) In the case of a spray adjuvant, any ingredient which will act as a functioning agent.

(s) The term “inert ingredient” means an ingredient which is not an active ingredient.

(t) The term “antidote” means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(u) The term “person” means any individual, partnership, association, corporation or organized group of persons, whether incorporated or not.

(v) The term “commissioner” means the Commissioner of Agriculture and Commerce, or his agent.

(w) The term “entomologist” means the State Entomologist of the Mississippi Department of Agriculture and Commerce.

(x) The term “registrant” means the person registering any pesticide pursuant to the provisions of this chapter.

(y) The term “label” means the written, printed, or graphic matter on, or attached to, the pesticide, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide.

(z) The term “labeling” means all labels and other written, printed or graphic matter:

(i) Upon the pesticide or any of its containers or wrappers;

(ii) Accompanying the pesticide at any time;

(iii) To which reference is made on the label or in literature accompanying the pesticide, except when accurate, nonmisleading reference is made to current official publications of the United States Environmental Protection Agency, Department of Agriculture or Interior, the United States Public Health Service, State Experiment Station, state agricultural colleges, or other similar federal institutions or official agencies of this state, or other states authorized by law to conduct research in the field of pesticides.

(aa) The term “adulterated” shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the articles, or if any valuable constituent of the article has been wholly or in part abstracted.

(bb) The term “misbranded” shall apply to any pesticide:

(i) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading to any particular;

(ii) If it is an imitation of or is offered for sale under the name of another pesticide;

(iii) If its labeling does not contain a statement of the use classification under which the product is registered;

(iv) If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, together with any requirements imposed under the Federal Insecticide, Fungicide and Rodenticide Act, are adequate for the protection of health and environment;

(v) If the label does not contain a warning or caution statement which may be necessary and, if complied with, together with any requirements which may be imposed under the Federal Insecticide, Fungicide and Rodenticide Act, are adequate to protect health and environment;

(vi) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase; the ingredient statement may appear prominently on another part of the container as permitted under the Federal Insecticide, Fungicide and Rodenticide Act if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(vii) If any word, statement or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(viii) If in the case of an insecticide, fungicide or herbicide, or nematicide when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide; or

(ix) In the case of a plant regulator, defoliant or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effect on plants or parts thereof shall not be deemed to be injurious when this is the purpose for which the plant regulator, defoliant or desiccant was applied, in accordance with the label claims and recommendations.

(cc) The term "environment" includes water, air, land and all plants and man and other animals living therein and inter-relationships which exist among these.

(dd) The term "EPA" means the United States Environmental Protection Agency.

(ee) The term "imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation under this chapter would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior.

(ff) The term "pest" means:

(i) Any insects, rodents, nematodes, fungi, weeds, or

(ii) Other forms of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the commissioner declares to be a pest.

(gg) The term "licensed pesticide dealer" means any person who distributes or offers for sale restricted use pesticides and/or state restricted use pesticides.

(hh) The term "Pesticide dealer manager" means an individual (who may be the owner) supervising pesticide distribution at one (1) outlet holding a pesticide dealer license.

(ii) The term "protect health and environment" means protection against any unreasonable adverse effects on the environment.

(jj) The term "restricted use pesticide" means any pesticide classified for restricted use by EPA or the commissioner. Any pesticide which is not classified for restricted use by January 1, 1976, will be deemed to be for general use. In order not to deprive the citizens of this state of the benefits derived from newly developed pesticides or uses which may be restricted by EPA after January 1, 1976, the commissioner may register such pesticides for restricted use if that is the only method by which they may be made available to the citizens of Mississippi.

(kk) The term "state restricted pesticide" means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the commissioner determines subsequent to a hearing requires additional restrictions for that use to protect the environment, including man, lands, beneficial insects, animals, crops and wildlife other than pests.

(*ll*) The term "unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

(mm) The term "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

SOURCES: Codes, 1942, § 5000-02; Laws, 1950, ch. 452, § 2; Laws, 1964, 1st Ex. Sess. ch. 32; Laws, 1968, ch. 248, § 1; Laws, 1970, ch. 266, § 1; Laws, 1971, ch. 509, § 1; Laws, 1975, ch. 319, § 4; Laws, 1991, ch. 530, § 15, eff from and after July 1, 1991.

Cross References — Notification of Department of Agriculture and Commerce when chemical, as defined in this section, located in underground water, exceeds or is likely to exceed state standards and chemical's source is not within Commission's jurisdiction, see § 49-17-26.

Federal Aspects — The Federal Insecticide, Fungicide and Rodenticide Act is codified at 7 USCS §§ 136 et seq.

JUDICIAL DECISIONS

1. In general.

Anthrax vaccines do not fall in the category of economic poisons. Livestock Servs., Inc. v. American Cyanamid Co., 244 Miss. 531, 142 So. 2d 210 (1962).

§ 69-23-5. Prohibited acts; application of Trade Secrets Act.

(1) It shall be unlawful for any person to distribute, sell or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of Section 69-23-7 or any pesticide if any of the claims made for it or any of the directions for its use differ from its composition or representations made in connection with its registration; provided, that in the discretion of the commissioner a change in the labeling or formula of a pesticide may be made within a reregistration period within requiring registration of the product if the registration is amended to reflect such change and if the changes will not violate any provisions of FIFRA or this chapter.

(b) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one (1) through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the manufacturer, registrant or person for whom manufactured;

(ii) The name, brand, or trademark under which said article is sold;

(iii) The net weight or measure of the content, subject, however, to such reasonable variations as the commissioner may permit;

(iv) A batch number from which the date of packaging can be determined for certain pesticides which have been determined to deteriorate in relatively short periods, when requested by the commissioner;

(v) The EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide if required by regulation under FIFRA;

(vi) Any other information required by this chapter or regulation promulgated thereunder; except that this subsection (b) shall not apply:

(i) To the transportation, within the meaning of this section, of refined petroleum naphtha or refined petroleum distillate, by tank truck, or by tank cars, or in tanks by rail;

(ii) To the delivery of refined petroleum naphtha or refined petroleum distillate from a storage tank, or tank truck, in a quantity of not less than fifty (50) gallons, if, at the time of such delivery the person delivering the said material delivers to the person to whom the delivery is made, or his agent or representative, a written or printed statement containing the information, with respect to the material delivered, required by the provision of clauses (i), (ii) and (iii) of this subsection (b);

Provided, however, that the commissioner may designate that certain specific pesticides may be distributed or offered for sale by the manufacturer and/or registrant in bulk, in which case the label information required and any other statements required by this chapter must be stated in or attached to the invoice; and in addition, a copy of said invoice must be given to the purchaser at the time the pesticide is delivered. In addition to the above, the commissioner may set rules and regulations for the sale, dispensing, storing, handling and transportation of pesticides in bulk.

(c) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in Section 69-23-9, unless the label shall bear, in addition to any other matter required by this chapter:

(i) The skull and crossbones;

(ii) The word "poison" prominently, in red on a background of distinctly contrasting color;

(iii) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

(d) Any pesticide which has not been colored or discolored pursuant to the provisions of this chapter.

(e) Any pesticide which is adulterated or misbranded.

(f) Any pesticide in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) For any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter;

(b) For any person to use for his own advantage or to reveal, other than to the commissioner or proper officials or employees of the state or the EPA, or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in preparation of antidotes, any information relative to formulas of products acquired by authority of this chapter or any information judged by the commissioner as containing or relating to trade secrets or commercial or financial information obtained by authority of this chapter and marked as confidential by the registrant;

(c) For any person to distribute any pesticide labeled for restricted use to any person, or his agent who is not certified to use or purchase such pesticide;

(d) For any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or to regulations of the commissioner if those regulations further restrict the uses provided on the labeling;

(e) For any person to handle, transport, store, display, distribute or dispose of any pesticide or container in such a manner as to endanger man and his environment.

The commissioner is hereby authorized, empowered and directed to authorize and grant a permit to any person, firm or corporation to dispose of any existing stock of pesticide it may have on hand at the time this chapter becomes effective, including all packages, labels and containers; provided that such stock is packaged and labeled in accordance with federal laws and regulations governing the packaging and labeling of such products.

(3) In addition to any criminal remedy set forth in subsection (2), remedies for misappropriation of a trade secret shall be governed by the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

SOURCES: Codes, 1942, § 5000-03; Laws, 1950, ch. 452, § 3; Laws, 1952, ch. 167; Laws, 1958, ch. 151; Laws, 1970, ch. 266, § 2; Laws, 1971, ch. 509, § 2; Laws, 1975, ch. 319, § 5; Laws, 1984, ch. 341; Laws, 1990, ch. 442, § 15, eff from and after July 1, 1990.

Cross References — Registration of pesticides meeting requirements under this section, see § 69-23-7.

Requirement that Commissioner of Environmental Quality register as pesticide article, composition and labeling of which comply with requirements of this section, see § 69-23-7.

Seizure of economic poisons, see § 69-23-21.

ATTORNEY GENERAL OPINIONS

The Board of Agricultural Aviation has authority over the aerial application of chemicals and pesticides in Mississippi, except for the aerial application of hormone-type herbicides, which fall under the jurisdiction of the Agriculture Department. Chisolm, July 16, 2004, A.G. Op. 04-0281.

RESEARCH REFERENCES

ALR. Products liability: Recovery for injury or death resulting from intentional inhalation of product's fumes or vapors to produce intoxicating or similar effect. 50 A.L.R.5th 275.

What constitutes use of pesticide in manner inconsistent with its labeling, so as to violate § 12(a)(2)(G) of Federal Insecticide, Fungicide, and Rodenticide Act (7 USCS § 136j(a)(2)(G)). 69 A.L.R. Fed. 835.

Federal pre-emption of state common-law products liability claims pertaining to pesticides. 101 A.L.R. Fed. 887.

Am Jur. 17 Am. Jur. Proof of Facts 2d 459, Breach of Warranty as to Effectiveness of Insecticide.

§ 69-23-7. Registration.

(1) Every pesticide which is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the commissioner, and such registration shall be renewed annually. Products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels bear a designation identifying the products as the same pesticide, may be registered as a single pesticide. Additional names and labels shall be added by supplement statements during the current period of registration. The registrant shall file with the commissioner a statement including:

(a) The name and address of the registrant and the name and address of the person whose name will appear on the label if other than the registrant;

(b) The name of the pesticide;

(c) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including directions for use and the use classification as provided for in FIFRA;

(d) If requested by the commissioner, a full description of the tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only for information which is different from that furnished when the pesticide was registered or last reregistered; and

(e) Any other information required by the commissioner which may be prescribed by regulation.

(2) The registrant shall pay an annual fee of Two Hundred Dollars ($200.00) for each brand or grade of pesticide registered. All of the fees collected under this section shall be deposited in a special fund in the Treasury of the State of Mississippi and subject to appropriation by the Mississippi Legislature. The fees shall be used by the Mississippi Department of Agriculture and Commerce for enforcement of this chapter. The Department of Agriculture and Commerce may contract with the Department of Environmental Quality for a groundwater monitoring program.

(3) The commissioner, whenever he deems it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide. If it appears to the commissioner that the composition of the articles warrants the proposed claims for it, and if the article and its labeling and other material required to be submitted comply with the requirements of Section 69-23-5, he shall register the article, if the article is registered under FIFRA. If the state is certified by the administrator of EPA to register pesticides pursuant to Section 24(c) of FIFRA, the commissioner may register the article to meet special local needs if he determines that the registration will not be in violation of FIFRA.

(4) If it does not appear to the commissioner that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, the commissioner may refuse to register the article. In order to protect the public, the commissioner may, at any time, cancel or suspend the registration of a pesticide if he determines that it does not comply with this chapter or creates an imminent hazard. If he receives a notice from the Commission on Environmental Quality under Section 49-17-26 in relation to state underground water quality standards, he may order the relabeling of any pesticide, or suspend or cancel the registration of any pesticide or any use of any pesticide, or adopt a regulation in accordance with Section 69-23-9 to protect the underground water resources, as defined in the Federal Safe Drinking Water Act. He may advise EPA of the manner in which a federally registered pesticide fails to comply with FIFRA and suggest the necessary corrections. Regulatory action

taken under this subsection shall be conducted in accordance with Sections 69-25-51 through 69-25-63.

(5) Notwithstanding any other provision of this chapter, registration is not required in case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person.

SOURCES: Codes, 1942, § 5000-04; Laws, 1950, ch. 452, § 4; Laws, 1958, ch. 150; Laws, 1971, ch. 509, § 3; Laws, 1975, ch. 319, § 6; Laws, 1987, ch. 523, § 4; Laws, 1991, ch. 530, § 16; Laws, 1993, ch. 613, § 6; Laws, 2001, ch. 559, § 1; Laws, 2005, ch. 533, § 13, eff from and after July 1, 2005.

Editor's Note — Laws, 1987, ch. 523, § 7, effective from and after July 1, 1987, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for fees or charges due or accrued under the Mississippi Economic Poison Law of 1950 or the Mississippi Fertilizer Law of 1970 prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment and collection fees due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Duty of Department of Agriculture and Commerce to proceed in accordance with this section and other laws upon notification of existence of chemical in underground water exceeding or likely to exceed state standards and whose source is not within jurisdiction of Commission on Environmental Quality, see § 49-17-26.

Unlawfulness of failing to register a pesticide before distribution, sale, or offer to sell, see § 69-23-5.

Prohibited acts regarding economic poisons, see § 69-23-5.

Exemptions from penalties, see § 69-23-15.

Deposit of fertilizer registration fees into special fund as set forth in this section, see § 75-47-7.

Federal Aspects — The Federal Insecticide, Fungicide, and Rodenticide Act is codified at 7 USCS §§ 136 et seq., and section 24(c) of that Act is codified at 7 USCS § 136a.

ATTORNEY GENERAL OPINIONS

The Board of Agricultural Aviation has authority over the aerial application of chemicals and pesticides in Mississippi, except for the aerial application of hormone-type herbicides, which fall under the jurisdiction of the Agriculture Department. Chisolm, July 16, 2004, A.G. Op. 04-0281.

RESEARCH REFERENCES

ALR. Validity, Construction, and Operation of State and Municipal Act or Regulation Requiring Notice of Pesticide and Herbicide Use. 18 A.L.R.6th 793.

Rights of nonregistrants under Federal Environmental Pesticide Control Act of 1972 (7 USCS §§ 136-136y) to oppose cancellation of pesticide use registrations. 48 A.L.R. Fed. 756.

§ 69-23-8. Fee rebate for pesticide manufacturers benefiting employment in Mississippi.

(1) A pesticide manufacturer having paid the pesticide registration fee required by Section 69-23-7(2) may make written application to the department on a form provided by the department for a rebate of not more than fifty percent (50%) of each pesticide registration fee paid by the pesticide manufacturer. The application must be submitted at the time of registration.

(2) Upon receipt of a written application for a rebate of the pesticide registration fee, the commissioner may grant a rebate of not more than fifty percent (50%) of each pesticide registration fee to the pesticide manufacturer if the commissioner finds, based upon the application submitted by the pesticide manufacturer, public records and facts subject to official notice that the operations of the pesticide manufacturer substantially benefit the economy of Mississippi and employment in Mississippi.

SOURCES: Laws, 2001, ch. 559, § 2, eff from and after July 1, 2001.

§ 69-23-9. Determinations; rules and regulations; uniformity.

(1) The commissioner is authorized:

(a) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles or substances;

(b) To determine whether pesticides registered under authority of Section 24(c) of FIFRA are highly toxic to man as described in federal regulations;

(c) To determine standards of coloring or discoloring for pesticides and to subject pesticides to the requirements of Section 69-23-5(1).

(2) The commissioner may adopt, amend or repeal rules and regulations for carrying out the provisions of this chapter, including, but not limited to, rules and regulations providing for the collection and examination of samples; the safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers; protecting the environment; labeling and adopting state restricted pesticide uses.

(3) In order to avoid confusion endangering the public health resulting from diverse requirements, particularly as to the labeling and coloring of pesticides, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such pesticides. To this end the commissioner is authorized to adopt such regulations, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States government for pesticides.

(4) No action taken by the commissioner under this section shall be effective unless and until such action is approved by the advisory board created under Section 69-25-3, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5000-05; Laws, 1950, ch. 452, § 5; Laws, 1971, ch. 509, § 4; Laws, 1975, ch. 319, § 7; Laws, 2004, ch. 518, § 1; Laws, 2005, ch. 533, § 14, eff from and after July 1, 2005.

Cross References — Definition of terms relating to economic poisons, see § 69-23-3.

Unlawfulness of failure to label pesticides, see § 69-23-5.

Prohibited acts concerning economic poisons, see § 69-23-5.

Adoption of regulation in accordance with this section to protect underground water resources from hazardous pesticides, see § 69-23-7.

Adoption of regulation in accordance with this section to protect underground water resources, in connection with Mississippi Waste Disposal Pesticide Act, see § 69-23-7.

Adoption of regulation in accordance with this section for protection of underground water resources from fertilizer contamination, see § 75-47-7.

Federal Aspects — Federal Safe Drinking Water Act, see 21 USCS § 349, 42 USCS §§ 300f-300j-9.

§ 69-23-11. Enforcement.

(1) The commissioner or his employees, with proper identification and during normal working hours, shall have free access to all places of business, factories, buildings, carriages, cars, stores, warehouses and other places where pesticides are offered for sale or kept for sale or distribution or use and application, and shall have authority to inspect or open any container of pesticide and to take a sample for the purpose of examination and analysis. It shall be the duty of the commissioner to take such samples and deliver them to the State Chemist for examination and analysis.

(2) It shall be the duty of the State Chemist to cause as many analyses to be made of samples delivered to him by the commissioner as may be necessary to properly carry into effect the intent of this chapter. He shall make reports of such analysis to the commissioner and to the manufacturer, firm or person responsible for placing on the market the pesticide represented by the samples.

(3) If it appears that any pesticide fails to comply with the provisions of this chapter, or if provisions of this chapter are violated, the commissioner may proceed with appropriate action as provided in this chapter or under the administrative hearing procedures provided in Section 69-25-51 et seq. If, in the opinion of the commissioner, it appears that the provisions of the chapter have been violated, the commissioner may refer the facts to the county attorney, district attorney or Attorney General.

(4) It shall be the duty of each county attorney, district attorney or Attorney General to whom any such violation is reported to cause appropriate proceedings to be instituted and prosecuted in the appropriate court without delay.

(5) The commissioner shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this chapter.

SOURCES: Codes, 1942, § 5000-06; Laws, 1950, ch. 452, § 6; Laws, 1971, ch. 509, § 5; Laws, 1975, ch. 319, § 8; Laws, 1997, ch. 449, § 1; Laws, 2005, ch. 533, § 15, eff from and after July 1, 2005.

Cross References — State Entomologist or designee as reviewing officer with respect to alleged violations of provisions of this chapter, see § 69-25-51.

§ 69-23-13. Jurisdiction of commissioner.

Jurisdiction in all matters pertaining to the distribution, sale and transportation of pesticides is vested exclusively in the commissioner.

SOURCES: Codes, 1942, § 5000-12; Laws, 1950, ch. 452, § 12; Laws, 1971, ch. 509, § 10; Laws, 1975, ch. 319, § 9, eff from and after July 1, 1975.

JUDICIAL DECISIONS

1. In general.

Ordinance adopted by town pursuant to police power, requiring permit for application of pesticide to public land, was not pre-empted by Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS §§ 136-136y), because (1) language of FIFRA did not explicitly pre-empt local regulation and provided no clear and manifest indication that Congress sought to supplaint local authority over pesticide regulation impliedly, (2) legislative history was at best ambiguous, and (3) there was no actual conflict either between FIFRA in the ordinance or between FIFRA and local regulation generally. Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597, 111 S. Ct. 2476, 115 L. Ed. 2d 532 (1991).

§ 69-23-15. Exemptions.

(1) The penalties provided for violations of Section 69-23-5 (1) shall not apply to:

(a) Any carrier while lawfully engaged in transporting a pesticide within this state if such carrier shall, upon request, permit the commissioner or his employees to copy all records showing the transaction in and movement of the articles;

(b) Public officials of this state and the federal government engaged in the performance of their official duties in administering state or federal pesticide laws or regulations or while engaged in pesticide research.

(c) The manufacturer or shipper of a pesticide for experimental use only:

(i) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or

(ii) By others if the pesticides shipper or manufacturer holds a valid experimental use permit as provided for by Section 69-23-25 or by EPA.

(2) No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packaged according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply.

SOURCES: Codes, 1942, § 5000-07; Laws, 1950, ch. 452, § 7; Laws, 1971, ch. 509, § 6; Laws, 1975, ch. 319, § 10, eff from and after July 1, 1975.

§ 69-23-17. Cooperation.

The commissioner is authorized and empowered to cooperate with, and enter into cooperative agreements with, any other agency of this state, the United States Government, or its agencies or any public or private agency for the purpose of carrying out the provisions of this chapter and FIFRA and securing uniformity of regulations.

SOURCES: Codes, 1942, § 5000-10; Laws, 1950, ch. 452, § 10; Laws, 1971, ch. 509, § 9; Laws, 1975, ch. 319, § 11, eff from and after July 1, 1975.

§ 69-23-19. Repealed.

Repealed by Laws of 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997).

[Codes, 1942, § 5000-08; Laws, 1950, ch. 452, § 8; Laws, 1971, ch. 509, § 7]

Editor's Note — Former § 69-23-19 provided for penalties for violations of the Mississippi Pesticide Law. For current provisions affecting penalties for violations of the Mississippi Pesticide Law, see § 69-23-29.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-23-21. Seizures.

(1) Any pesticide that is distributed, sold or offered for sale within this state or delivered for transportation or transported to intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any circuit court in any county of the state where it may be found and seized for confiscation and condemnation:

(a) If it is adulterated or misbranded;

(b) If it has not been registered under the provisions of Section 69-23-7;

(c) If it fails to bear on its label the information required by this chapter;

(d) If it is a white power pesticide and is not colored as required under this chapter.

(2) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale, as the court may direct, and the proceeds, if such article is sold, less legal costs, shall be paid to the commissioner for transmission to the General Funds of the State Treasury.

(3) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person shown to be the claimant of the article.

(4) The remedy in this section is supplemental to and not in replacement of the remedies under Sections 69-25-51 through 69-25-63.

SOURCES: Codes, 1942, § 5000-09; Laws, 1950, ch. 452, § 9; Laws, 1971, ch. 509, § 8; Laws, 1975, ch. 319, § 12; Laws, 2005, ch. 533, § 16, eff from and after July 1, 2005.

§ 69-23-23. Nonresidents to designate Secretary of State as agent for service of process; bond, when required.

(1) Any nonresident individual, partnership, association, firm, or corporation desiring to distribute, sell, or offer for sale within this state any product described in this chapter, and any such nonresident who may be subject otherwise to the provisions of such chapter, shall file a written power of attorney designating the Secretary of State as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident individual, partnership, firm, association, or corporation; and such power of attorney shall be so prepared in such form as to render effective the jurisdiction of the courts of Mississippi over such nonresident applicants and make such applicants amenable to the jurisdiction of the courts of this state. Provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the Secretary of State as such agent. The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents. The commissioner shall be furnished with a copy of such designation of the Secretary of State or of a resident agent, such copy to be duly certified by the Secretary of State.

(2) The commissioner may also require such nonresident subject to the provisions of this chapter to furnish to him a fidelity bond or other security satisfactory to him and conditioned that the principal therein named shall pay for any and all damages suffered by any person by reason of the negligence of the principal or his or its agents in the conduct of said business and shall honestly conduct said business and as otherwise conditioned by said commissioner, provided that in no case shall a bond or other security less than Ten Thousand Dollars ($10,000.00) be required. A copy of said bond duly certified by the commissioner shall be received as evidence in all courts of this state without further proof. Any person having a right of action against such person, firm, association or corporation may bring suit against the principal and sureties on such bond. Should the surety furnished become unsatisfactory, said applicant shall execute a new bond and should he fail to do so, it shall be the duty of the commissioner to cancel his license and give him notice of said fact, and it shall be unlawful thereafter for such person to engage in said business without obtaining a new license.

SOURCES: Codes, 1942, § 5000-14; Laws, 1952, ch. 266; Laws, 1971, ch. 509, § 11; Laws, 2005, ch. 533, § 17, eff from and after July 1, 2005.

JUDICIAL DECISIONS

1. In general.

The intent of the legislature in requiring nonresidents to qualify was to make them amenable to the process of the state courts in actions by the state plant board to enforce the provisions of the act and to provide to a citizen of Mississippi redress for an injury against a manufacturer, distributor, or seller of economic poisons. Livestock Servs., Inc. v. American Cyanamid Co., 244 Miss. 531, 142 So. 2d 210 (1962).

Since anthrax vaccine is not an economic poison, a foreign manufacturer and distributor which appointed the Secretary of State as its agent for service of process under this act did not subject itself to the jurisdiction of the state court in an action for damages arising out of an alleged breach of warranty in reference to anthrax vaccine. Livestock Servs., Inc. v. American Cyanamid Co., 244 Miss. 531, 142 So. 2d 210 (1962).

§ 69-23-25. Experimental use permits.

Upon the condition that the State of Mississippi is certified by the Administrator of the United States Environmental Protection Agency to issue experimental use permits for the testing of pesticides, the commissioner of agriculture and commerce may prescribe regulations for the issuance of such experimental permits. The commissioner may issue such experimental permit if he determines that the applicant needs the permit to obtain information necessary to register a pesticide under the provisions of this chapter.

SOURCES: Laws, 1975, ch. 319, § 1, eff from and after July 1, 1975.

§ 69-23-27. Licensing of pesticide dealers.

(1) It is unlawful for any person to act as a licensed pesticide dealer without being licensed by the commissioner. A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any dealer who has no pesticide outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his principal out-of-state location or outlet.

(2) Application for a license shall be submitted on a form prescribed by the commissioner, and shall include the name and address of the applicant, the name of the pesticide dealer manager, the address of each outlet, the name of the resident agent if the dealer is not a resident of this state, and any other information required by the commissioner.

(3) This section shall not apply to (a) a licensed pesticide applicator who sells pesticides only as an integral part of his pesticide application service where such pesticides are applied by the commercial applicator; or (b) any federal, state, county or municipal agency which provides pesticides only for its own programs.

(4) The commissioner may set standards and qualifications for licensing of pesticide dealers and dealer managers to determine their competency.

(5) Licenses for pesticide dealers will expire on December 31 of each year and must be renewed annually.

(6) The commissioner may prescribe rules and regulations pertaining to licensing of pesticide dealers, including but not limited to record keeping, and may at any time cancel, suspend or revoke a pesticide dealer license when he finds there has been a failure or refusal to comply with the provisions of this chapter or regulations adopted hereunder. The regulatory action authorized in this subsection shall be governed by Sections 69-25-51 through 69-25-63.

SOURCES: Laws, 1975, ch. 319, § 2; Laws, 2005, ch. 533, § 18, eff from and after July 1, 2005.

§ 69-23-29. Penalties.

(1)(a) Any person violating any of the provisions of this chapter or the rules and regulations issued under this chapter is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than one (1) year or by both such fine and imprisonment at the discretion of the court having jurisdiction.

(b) Each violation and each day's violation for continuing acts, shall constitute a separate offense.

(c) Any person violating any of the provisions of this chapter or the rules and regulations issued under this chapter in such a way that causes harm or poses a threat to man, animals or the environment is guilty of a felony and, upon conviction, shall be punished by a fine of not more than Twenty-Five Thousand Dollars ($25,000.00) or by imprisonment in the State Penitentiary for a term of not more than twenty (20) years or by both such fine and imprisonment for each violation.

(2) Each violation of this chapter or the applicable rules and regulations shall subject the violator to administrative action as provided for in Sections 69-25-51 through 69-25-63.

SOURCES: Laws, 1997, ch. 449, § 4; Laws, 2005, ch. 533, § 19, eff from and after July 1, 2005.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

PESTICIDE APPLICATION

SEC.

69-23-101. Short title.
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§ 69-23-101. Short title.

Sections 69-23-101 through 69-23-135 may be known as the "Mississippi Pesticide Application Law of 1975."

SOURCES: Laws, 1975, ch. 318, § 1; Laws, 2005, ch. 533, § 20, eff from and after July 1, 2005.

RESEARCH REFERENCES

ALR. Federal preemption of state common law products liability claims pertaining to pesticides. 101 A.L.R. Fed. 887.

§ 69-23-103. Administration.

Sections 69-23-101 through 69-23-135 shall be administered by the Commissioner of the Mississippi Department of Agriculture and Commerce, or his agent, herein referred to as the "commissioner."

SOURCES: Laws, 1975, ch. 318, § 2; Laws, 2005, ch. 533, § 21, eff from and after July 1, 2005.

§ 69-23-105. Declaration of purpose.

The purpose of Sections 69-23-101 through 69-23-135 is to provide a means for the state certification of applicators of restricted use pesticides required under the Federal Insecticide, Fungicide and Rodenticide Act, and to regulate in the public interest the use and application of restricted use pesticides, except as the application of restricted use pesticides is regulated under Sections 69-19-1 through 69-19-15 or 69-21-101 through 69-21-128, and to designate the Mississippi Department of Agriculture and Commerce as the agency responsible for administering a plan for certification of applicators of restricted use pesticides and to cooperate with the United States Environmental Protection Agency as provided for in the Federal Insecticide, Fungicide and Rodenticide Act, and for other purposes.

SOURCES: Laws, 1975, ch. 318, § 3; Laws, 1991, ch. 530, § 17; Laws, 2005, ch. 533, § 22; Laws, 2009, ch. 515, § 13, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Section 69-19-11 referred to in this section was repealed by Laws, 1997, ch. 449, § 5 eff from and after passage (approved March 25, 1997).

Federal Aspects — Federal Insecticide, Fungicide and Rodenticide Act, see 7 USCS §§ 136 et seq.

§ 69-23-107. Definitions.

When used in the context of Sections 69-23-101 through 69-23-135, the following terms shall be ascribed the following meanings:

(a) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi.

(b) "Certification" means the recognition by a state that a person is competent and thus authorized to use or supervise the use of restricted use pesticides.

(c) "Certified applicator" means any person who is certified to use or supervise the use of any restricted use pesticide covered by this certification.

(d) "Commercial applicator" means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide that is classified for restricted use for any purpose or on any property other than as provided by the definition of "private applicator."

(e) "Division" means the Bureau of Plant Industry within the Regulatory Office of the Mississippi Department of Agriculture and Commerce.

(f) "Division of Plant Industry" means the Bureau of Plant Industry within the Regulatory Office of the Mississippi Department of Agriculture and Commerce.

(g) "EPA" means the United States Environmental Protection Agency.

(h) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

(i) "License" means a license, certificate or permit.

(j) "Person" means any individual, partnership, association, corporation or organized group of persons, whether incorporated or not.

(k) "Pest" means:

(i) Any insects, rodents, nematodes, fungi, weeds; and

(ii) Other forms of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria or other microorganism on or in living man or other living animals) that the commissioner declares to be a pest.

(*l*) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, mitigating or attracting any pests; and shall also include adjuvants intended to enhance the effectiveness of pesticides; and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(m) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned, rented or controlled by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person, subject to regulations adopted under authority granted by Sections 69-23-101 through 69-23-135.

(n) "Public applicator" means any individual who applies restricted use pesticides as an employee of a state agency, municipal corporation, public utility, or other governmental agency. This term does not include employees who work under direct "on-the-job" supervision of a public applicator.

(o) "Restricted use pesticide" means any pesticide classified for restricted use by EPA or by the commissioner.

(p) "State restricted pesticide use" means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the commissioner determines subsequent to a hearing, requires additional restrictions for that use to protect the environment including man, lands, beneficial insects, animals, crops and wildlife, other than pests.

(q) "Under the direct supervision of a certified applicator" means, unless otherwise prescribed by its labeling, a pesticide that is to be applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though that certified applicator is not physically present at the time and place the pesticide is applied.

(r) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

(s) Words and terms as defined in Sections 69-19-1 through 69-19-15, 69-21-101 through 69-21-128 and 69-23-1 through 69-23-29, when used in Sections 69-23-101 through 69-23-135 shall have the same meaning ascribed therein.

SOURCES: Laws, 1975, ch. 318, § 4; Laws, 1991, ch. 530, § 18; Laws, 2005, ch. 533, § 23; Laws, 2009, ch. 515, § 14, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Section 69-19-11 referred to in (s) was repealed by Laws, 1997, ch. 449, § 5, eff from and after passage (approved march 25, 1997). For current provisions, see § 69-19-15.

Federal Aspects — Federal Insecticide, Fungicide and Rodenticide Act, see 7 USCS §§ 136 et seq.

§ 69-23-109. Commissioner to adopt regulations; reports; regulation by other agencies.

(1) The commissioner may adopt regulations to carry out the provisions of Sections 69-23-1 through 69-23-135.

(2) In adopting regulations, the commissioner shall give consideration to pertinent research findings and recommendations of other agencies of this state or federal government. The commissioner shall report to the Legislature on or before February 1 of each year any regulation promulgated under this section which is more restrictive than applicable federal regulations.

(3) Regulations promulgated by the commissioner under Sections 69-23-1 through 69-23-135 shall not be effective until approved by the advisory board created under Section 69-25-3.

(4) In order to eliminate inequitable application or establishment of opposing regulations, the authority to regulate any matter pertaining to the registration, sale, handling, distribution, notification of use, application and use of pesticides shall vest solely in the Commissioner of Agriculture and Commerce, except where other state agencies, including the Agricultural Aviation Board, exercise such regulatory authority under state law.

SOURCES: Laws, 1975, ch. 318, § 5; Laws, 1992, ch. 539, § 1; Laws, 2005, ch. 533, § 24, eff from and after July 1, 2005.

§ 69-23-111. Licenses and permits.

(1) After October 21, 1976, it is unlawful for any person to engage in the application or use of any pesticide that is restricted by EPA or the commissioner, except as provided for and defined in Sections 69-19-1 through 69-19-15, 69-21-101 through 69-21-128 and 69-23-1 through 69-23-29, without being certified or licensed by the commissioner.

(2) The commissioner may classify licenses or permits to be issued under Sections 69-23-101 through 69-23-135. Separate classifications and subclassifications may be specified by the commissioner in conformity with FIFRA. Each classification may be subject to separate requirements of testing procedures.

(3) Application for license shall be made on a form provided by the commissioner and shall contain information regarding the applicant's qualifications, proposed operations, and license classification or classifications as prescribed by regulations.

(4) The commissioner shall require each applicant for a certified applicator's license to demonstrate competency by a written or oral examination, or any other equivalent procedure as may be adopted by the commissioner by regulation, that he possesses adequate knowledge with respect to the proper use and application of pesticides in the particular categories or classification for which application for license is made. The commissioner may cooperate with other state, federal and private agencies in preparing, administering and evaluating examinations or other equivalent procedures, including training, for determining competency of certified applicators, and shall consider and be guided by certification requirements set forth by EPA.

(5) If the commissioner finds the applicant qualified in the classification for which he has applied, he shall issue a certified applicator's license limited to that classification. Expiration dates of licenses may be established by regulation, unless revoked, suspended, denied, cancelled or modified prior thereto by the commissioner for cause as hereinafter provided.

SOURCES: Laws, 1975, ch. 318, § 6; Laws, 2005, ch. 533, § 25; Laws, 2009, ch. 515, § 15, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Section 69-19-11 referred to in (1) was repealed by Laws, 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997). For current provisions, see § 69-19-15.

Cross References — Responsibility of county mosquito control commission as to control and elimination of pests of a public health or annoyance nature, see § 41-27-9.

Federal Aspects — Federal Insecticide, Fungicide and Rodenticide Act, see 7 USCS §§ 136 et seq.

§ 69-23-113. Nonresident commercial applicators to designate Secretary of State as agent for service of process.

Any nonresident commercial applicator applying for a license under Sections 69-23-101 through 69-23-135 to operate in the state shall file a written power of attorney designating the Secretary of State as the agent of such nonresident upon whom service of process may be had in the event of any suit against the nonresident person, and such power of attorney shall be prepared and in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicant. Any nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the Secretary of State as such agent. The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents. The commissioner shall be furnished with a copy of such designation of the Secretary of State or of a resident agent, such copy to be duly certified by the Secretary of State.

SOURCES: Laws, 1975, ch. 318, § 7; Laws, 2005, ch. 533, § 26, eff from and after July 1, 2005.

§ 69-23-115. Violations.

It is unlawful for a person to:

(a) Make false or fraudulent claims through any media misrepresenting the effect of materials or methods to be used;

(b) Conduct pest control operations in a faulty, careless or negligent manner or to operate faulty or unsafe pest control equipment;

(c) Fail to comply with the provisions of Sections 69-23-101 through 69-23-135, or the regulations adopted hereunder;

(d) Fail to keep and maintain records required by Sections 69-23-101 through 69-23-135 or to make reports when required;

(e) Make false or fraudulent records, invoices or reports;

(f) Use fraud or misrepresentation in making application for a license or renewal for a license;

(g) Aid or abet any person in evading the provisions of Sections 69-23-101 through 69-23-135, or allow one's license to be used by another person;

(h) Impersonate any state or federal official;

(i) Commit a violation under FIFRA;

(j) Use any restricted use pesticide in a manner which is inconsistent with its labeling; or

(k) Commit any other act or omission specified in the regulations adopted under Sections 69-23-101 through 69-23-135.

SOURCES: Laws, 1975, ch. 318, § 8; Laws, 2005, ch. 533, § 27, eff from and after July 1, 2005.

§ 69-23-117. Records to be maintained by commercial applicators.

Commercial applicators shall maintain records with respect to the application of pesticides. Such relevant information as the commissioner may deem necessary and the length of time that these records shall be maintained may be specified by the commissioner, and upon request the licensee shall furnish a copy of such records.

SOURCES: Laws, 1975, ch. 318, § 9; Laws, 2005, ch. 533, § 28, eff from and after July 1, 2005.

§ 69-23-119. Exemptions.

(1) Any person duly licensed and certified under Section 69-19-1 through 69-19-15 or 69-21-101 through 69-21-128, is exempted from the licensing provisions of Sections 69-23-101 through 69-23-135.

(2) The commissioner may exempt any other persons as may be exempted by federal regulations.

(3) The commissioner may exempt public applicators from the requirements of Sections 69-23-113 and 69-23-117.

SOURCES: Laws, 1975, ch. 318, § 10; Laws, 2005, ch. 533, § 29; Laws, 2009, ch. 515, § 16, eff from and after passage (approved Apr. 8, 2009.)

Editor's Note — Section 69-19-11 referred to in this section was repealed by Laws, 1997, ch. 449, § 5 eff from and after passage (approved March 25, 1997). For current provisions, see § 69-19-15.

Section 69-23-119 referred to in (1) was repealed by Laws, 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997). For current provisions, see § 69-19-15.

Cross References — Responsibility of county mosquito control commission as to control and elimination of pests of a public health or annoyance nature, see § 41-27-9.

§ 69-23-121. Cooperative extension service to conduct courses of instruction and training.

The Mississippi Cooperative Extension Service shall conduct courses of instruction and training for the purpose of carrying out the provisions of Sections 69-23-101 through 69-23-135.

SOURCES: Laws, 1975, ch. 318, § 11; Laws, 2005, ch. 533, § 30, eff from and after July 1, 2005.

§ 69-23-123. Cooperative agreements.

The commissioner may cooperate with or enter into formal cooperative agreements with any public or private agency or educational institution of this state or any other state or federal agency for the purpose of carrying out the provisions of Sections 69-23-101 through 69-23-135, to encourage training of certified applicators and securing uniformity of regulations.

SOURCES: Laws, 1975, ch. 318, § 12; Laws, 2005, ch. 533, § 31, eff from and after July 1, 2005.

Cross References — Responsibility of county mosquito control commission as to control and elimination of pests of a public health or annoyance nature, see § 41-27-9.

§ 69-23-125. Enforcement; investigations.

The commissioner shall enforce the provisions of Sections 69-23-101 through 69-23-135. The commissioner or his representative may enter upon public or private premises at reasonable times for the purpose of enforcing said sections, and may investigate complaints of injury or accidents resulting from use of restricted use pesticides.

SOURCES: Laws, 1975, ch. 318, § 13; Laws, 2005, ch. 533, § 32, eff from and after July 1, 2005.

Cross References — State Entomologist or designee as reviewing officer with respect to alleged violations of provisions of this chapter, see § 69-25-51.

§ 69-23-127. Injunctive relief.

The commissioner may obtain an injunction to enjoin the violation of Sections 69-23-101 through 69-23-135 or any regulations issued under those sections in the chancery court of the county in which the violation occurs.

SOURCES: Laws, 1975, ch. 318, § 14; Laws, 2005, ch. 533, § 33, eff from and after July 1, 2005.

§ 69-23-129. Repealed.

Repealed by Laws of 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997).

[Laws, 1975, ch. 318, § 15.].

Editor's Note — Former § 69-23-129 provided for penalties for violations of the Mississippi Pesticide Application Law. For current provisions affecting penalties for violations of the Mississippi Pesticide Law, see § 69-23-135.

§ 69-23-131. When training, examination and certification of applicators may begin.

(1) Regulations may be promulgated by the commissioner after passage.

(2) Training, examination and certification of applicators may begin after passage in order for applicants to be certified by October 21, 1976.

(3) The requirement that applicators be certified in order to use or supervise the use of restricted use pesticides shall not be effective until October 21, 1976, or at a later date if permitted by EPA.

SOURCES: Laws, 1975, ch. 318, § 16, eff from and after October 1, 1975.

§ 69-23-133. Advisory committee.

The commissioner shall appoint an advisory committee, and by regulation establish the composition of the committee to include representatives from the agriculture, agribusiness and related industries.

The purpose of the committee shall be to advise and assist the commissioner in developing regulations and plans for implementing the provisions of Sections 69-23-101 through 69-23-135 and a pesticide regulatory program to meet the requirements of FIFRA.

SOURCES: Laws, 1975, ch. 318, § 17; Laws, 2005, ch. 533, § 34, eff from and after July 1, 2005.

§ 69-23-135. Penalties.

(1)(a) Any person violating any of the provisions of this chapter or the rules and regulations issued under this chapter at a minimum is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than one (1) year or by both such fine and imprisonment at the discretion of the court having jurisdiction.

(b) Each violation and each day's violation for continuing acts shall constitute a separate offense.

(c) Any person violating any of the provisions of this chapter or the rules and regulations issued under this chapter in such a way that causes harm or poses a threat to man, animals or the environment is guilty of a felony and, upon conviction, shall be punished by a fine of not more than Twenty-Five Thousand Dollars ($25,000.00) or by imprisonment in the State Penitentiary for a term of not more than twenty (20) years or by both such fine and imprisonment for each violation.

(2) Each violation of this chapter or the rules and regulations issued under this chapter shall subject the violator to administrative action as provided for in Sections 69-25-51 through 69-25-63.

SOURCES: Laws, 1997, ch. 449, § 2; Laws, 2005, ch. 533, § 35, eff from and after July 1, 2005.

Editor's Note — Section 69-25-55, referred to in (2), was repealed by Laws of 2005, ch. 533, § 36, effective from and after July 1, 2005.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

MISSISSIPPI WASTE PESTICIDE DISPOSAL ACT OF 1993 [REPEALED]

SEC.
69-23-301 through 69-23-313. Repealed.

§§ 69-23-301 through 69-23-313. Repealed.

Repealed by Laws of 1993, ch. 613, § 8, eff on July 1, 1998.

§ 69-23-301 through § 69-23-313. [Laws, 1993, ch. 613, §§ 1 to 5, 7, 8, eff from and after passage (approved April 12, 1993)]

Editor's Note — Former §§ 69-23-301 through 69-23-313 related to the Mississippi Waste Pesticide Disposal Act of 1993.

CHAPTER 24

Fertilizing Materials and Additives

Sec.

69-24-1. Short title.
69-24-3. Administration.
69-24-5. Definitions.
69-24-7. Labeling.
69-24-9. Registration of each separate soil or plant amendment product.
69-24-11. Refusal or cancellation of registration; hearing.
69-24-13. Inspection fees; tonnage payments; penalties; disclosure of information.
69-24-15. Sampling, inspection and analysis.
69-24-17. Penalties for deficient analysis; determination of commercial values.
69-24-19. Misbranding.
69-24-21. Adulteration.
69-24-23. "Stop sale, use or removal" orders.
69-24-25. Violations; notice; hearings; penalties; warnings; injunctive relief.
69-24-27. Adoption and enforcement of rules and regulations.

§ 69-24-1. Short title.

This chapter shall be known as the "Mississippi Soil and Plant Amendment Law of 1978".

SOURCES: Laws, 1978, ch. 322, § 1, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 42, 47, 49, 50.

CJS. 3 C.J.S., Agriculture §§ 89 et seq.

§ 69-24-3. Administration.

This chapter shall be administered by the commissioner of agriculture and commerce of the State of Mississippi, hereinafter referred to as the commissioner, and the State Chemist of Mississippi, as specified in the following sections.

SOURCES: Laws, 1978, ch. 322, § 2, eff from and after July 1, 1978.

§ 69-24-5. Definitions.

As used in this chapter, the following terms shall have the definition ascribed to them herein unless the context requires otherwise:

(a) "Amending ingredient" means a substance which will improve the physical or chemical characteristics of the soil or improve crop production or quality when applied to the soil, plant or seed.

(b) "Brand" means the term, designation, trade mark, product name or other specific designation under which individual soil or plant amendments are offered for sale.

(c) "Bulk" means in nonpackaged form.

(d) "Distribute" means to import, consign, manufacture, produce, compound, mix or blend soil or plant amendments, or offer for sale, sell, barter or otherwise supply soil or plant amendments in this state.

(e) "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes or blends soil or plant amendments, or who offers for sale, sells, barters, or otherwise supplies soil or plant amendments in this state.

(f) "Inert ingredients" means the non-amending ingredients present in soil or plant amendments.

(g) "Ingredient form" means the chemical compound, such as salt, chelate, oxide, acid, etc., of an ingredient or the physical form of an ingredient.

(h) "Investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of soil or plant amendment.

(i) "Label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a soil or plant amendment.

(j) "Labeling" means all written, printed, or graphic matter, upon or accompanying any soil or plant amendment, or advertisements, brochures, posters, or television or radio announcements used in promoting the sale of such soil or plant amendment.

(k) "Minimum percentage" means that percent of soil or plant amending ingredient, when mentioned in any form or manner, that must be present before the product will be accepted for registration.

(*l*) "Official sample" means any sample of soil or plant amendment taken by the commissioner or his agent and designated as "Official" by the commissioner and state chemist.

(m) "Percent" or "percentage" means parts per hundred by weight.

(n) "Person" means individual, partnership, association, firm, or corporation.

(o) "Plant amendment" means any substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor or other desirable characteristics of plants except commercial fertilizers, soil amendments, agricultural liming materials, unmanipulated animal and vegetable manures, pesticides, plant regulators, Rhizobium legume inoculants, and other materials which may be exempted by regulation; provided that, commercial fertilizer shall be included if it is represented to contain, as an amending ingredient, a substance other than a recognized plant food element or is represented as promoting plant growth by means other than supplying a recognized plant food element.

(p) "Registrant" means the person who registers soil or plant amendments under the provisions of this chapter.

(q) "Soil amendment" means and includes any substance which is intended to improve the physical, chemical or other characteristics of the soil or improve crop production, except the following: commercial fertilizers, plant amendments, agricultural liming materials, agricultural gypsum, unmanipulated animal manures, topsoil, unmanipulated vegetable manures, pesticides, and herbicides, Rhizobium legume inoculants, and other material which may be exempted by regulation; provided that commercial fertilizer shall be included if it is represented to contain, as an amending ingredient, a substance other than a recognized plant food element or is represented as promoting plant growth by means other than supplying a recognized plant food element.

(r) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(s) "Weight" means the weight of material as offered for sale.

SOURCES: Laws, 1978, ch. 322, § 3, eff from and after July 1, 1978.

§ 69-24-7. Labeling.

(1) The following information shall appear on the fact or display side of all containers or accompany bulk shipments of soil or plant amendments; it shall be in a readable and conspicuous form, and shall be considered the label:

(a) net weight

(b) brand name

(c) minimum guaranteed analysis amending ingredients

name of ingredient . . . . . . ________ %

and continued until all soil and/or plant amending ingredients are listed and percentages given.

(d) inert ingredients. . . . . . ________ %

(e) purpose of product

(f) direction for application

(g) name and address of the registrant

(2) No information or statement shall appear on any package, label, delivery slip, or advertising matter which is false or misleading to the purchaser as to the use, value, quality, analysis, type or composition of the soil or plant amendment.

(3) The commissioner and State Chemist may require proof of claims made for any soil or plant amendments. If no claims are made, the commissioner and State Chemist may require proof obtained in controlled scientific experiments of usefulness and value of the soil or plant amendment. For evidence of proof they may rely on experimental data, evaluation, or advice supplied from such sources as the director of the Mississippi Agricultural and Forestry Experiment Station and the director of the Mississippi Cooperative Extension Service. The experimental results shall be related to Mississippi conditions for which the product is intended. The commissioner and State Chemist may accept or reject other sources of proof cited as additional evidence in their evaluation of soil or plant amendments.

(4) No amending ingredient may be listed or guaranteed on the labels or labeling of soil or plant amendments without the permission of the commissioner and State Chemist. The commissioner and State Chemist may allow a

soil or plant amending ingredient to be listed and guaranteed on the label or labeling if satisfactory supportive data is provided to substantiate the value and usefulness of such soil or plant amending ingredient. The commissioner and State Chemist may rely on outside sources such as the director of the Mississippi Agricultural and Forestry Experiment Station and the director of the Mississippi Cooperative Extension Service for assistance in evaluating the data submitted. When a soil amending ingredient is permitted to be listed or guaranteed, its concentration in the soil or plant amendment must be determinable by approved laboratory methods, and it shall be subject to inspection and analysis. The commissioner and State Chemist may prescribe methods and procedures of inspection and analysis of the soil or plant amending ingredient. The commissioner and State Chemist may stipulate, by regulation, the minimum qualities of soil or plant amending ingredient(s) required in soil or plant amendments.

(5) The commissioner and State Chemist may allow labeling by volume rather than weight in subsection (1) for liquid products. The commissioner and State Chemist may allow payment of inspection fees on a calculated weight equivalent to that volume.

SOURCES: Laws, 1978, ch. 322, § 4, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 47, 49, 50.

CJS. 3 C.J.S., Agriculture § 93.

§ 69-24-9. Registration of each separate soil or plant amendment product.

(1) Each separately identified product shall be registered before being distributed in this state. The application for registration shall be submitted to the commissioner and State Chemist on the form furnished or approved by the commissioner and shall be accompanied by a fee of Twenty-five Dollars ($25.00) per product. Upon approval by the commissioner and State Chemist, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30, following registration. Each manufacturer shall submit to the commissioner and State Chemist copies of labels and advertising literature with the registration request for each soil or plant amendment.

(2) A distributor shall not be required to register any brand of soil or plant amendment which is already registered under this act by another person, providing the label and labeling do not differ in any respect.

(3) Before registering any soil or plant amendment, the commissioner and State Chemist may require evidence to substantiate the claims made for the soil or plant amendment and proof of the value and usefulness of the soil or plant amendment as in Section 69-24-7(3), (4).

(4) The commissioner and State Chemist may, by regulation, set the minimum amount of any soil or plant amending ingredients that must be present before a soil or plant amendment can be registered and sold.

(5) If the application for renewal of the soil or plant amendment registration provided for in this section is not filed prior to July 1 of any one year, a penalty of Twenty-five Dollars ($25.00) shall be assessed and added to the original fee and shall be paid by the applicant before the renewal soil or plant amendment registration shall be issued; provided, however, that such penalty shall not apply if the applicant furnishes an affidavit that he has not distributed this soil or plant amendment subsequent to the expiration of his prior registration.

SOURCES: Laws, 1978, ch. 322, § 5, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 49, 50.

CJS. 3 C.J.S., Agriculture § 92.

§ 69-24-11. Refusal or cancellation of registration; hearing.

The commissioner and State Chemist are authorized and empowered to refuse registration of a soil or plant amendment if they find the brand of soil or plant amendment violates any section of this chapter or the rules and regulations promulgated under this chapter. The commissioner and State Chemist are authorized and empowered to cancel the registration of any brand of soil or plant amendments upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this chapter, or any rules or regulations promulgated thereunder; provided, that no registration shall be revoked until the registrant shall have been given the opportunity to appear for a hearing by the commissioner and State Chemist.

SOURCES: Laws, 1978, ch. 322, § 6, eff from and after July 1, 1978.

§ 69-24-13. Inspection fees; tonnage payments; penalties; disclosure of information.

(1) There shall be paid to the commissioner for all soil or plant amendments distributed in this state an inspection fee of Thirty-five Cents ($.35) per ton; provided, however, that products sold in packages of ten (10) pounds or less or one (1) gallon or less, shall be subject to an annual inspection fee of Fifty Dollars ($50.00) in lieu of the Thirty-five Cents ($.35) per ton fee. Such annual inspection fee shall be paid upon date of registration.

(2) Every person who distributes a soil or plant amendment in the state shall file with the commissioner, on forms furnished by him, quarterly statements for periods ending September 30, December 31, March 31 and June 30, setting forth the number of net tons of each soil or plant amendment distributed in the state during such quarter. The report shall be due within thirty (30) days following each quarter. Such statement shall be accompanied

by a payment of the inspection fee at the rate of Thirty-five Cents ($.35) per ton, except as specified in subsection (1) of this section.

(3) When more than one (1) distributor is involved in the distribution of a soil or plant amendment product, the last registrant who distributes to a non-registrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fees unless the reporting and paying of fees has been made by a prior distributor of the soil or plant amendment product. If the report is not filed or is filed falsely, or the inspection fee is not paid within thirty (30) days following each quarter, the commissioner and State Chemist may revoke the registration of such products and a penalty of Ten Dollars ($10.00) per day for each subsequent day shall be assessed against the registrant. The inspection fee and the penalty shall constitute a debt and become the basis for a judgment against such registrant, which may be collected by the commissioner and in any court of competent jurisdiction without prior demand.

(4) The report required by this section shall not be a public record, and it shall be a misdemeanor for any person to divulge any information given in such report which would reveal the business operations of a person or registrant making the report; provided, however, that nothing contained in this subsection shall be construed to prevent or make unlawful the use of information concerning the business operation of any registrant in any action, suit, or proceeding instituted under this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the commissioner.

(5) All fees paid to the commissioner for registration, inspection, or penalties for product deficiencies shall be deposited into the general fund account of the State of Mississippi.

SOURCES: Laws, 1978, ch. 322, § 7, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 49, 50.

CJS. 3 C.J.S., Agriculture § 91.

§ 69-24-15. Sampling, inspection and analysis.

(1) It is the duty of the commissioner and State Chemist, who may act through their duly authorized agents, to sample, inspect, make analyses of, and test soil or plant amendments distributed within the State of Mississippi at any time and place, and to such an extent they may deem necessary to determine whether such soil or plant amendments are in compliance with the provisions of this chapter. The commissioner, individually or through his agents, is authorized to enter upon any public or private premises of carriers during regular business hours in order to have access to soil or plant amendments subject to provisions of the chapter and the rules and regulations pertaining thereto, and to the records relating to their distribution.

(2) The methods of analysis and sampling shall be those adopted by the State Chemist from sources such as the Association of Official Analytical Chemists, or other sources acceptable to the State Chemist.

(3) The results of official analyses of soil or plant amendments and portions of official samples shall be distributed by the State Chemist as provided by regulation.

SOURCES: Laws, 1978, ch. 322, § 8, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 49, 50.

CJS. 3 C.J.S., Agriculture § 91.

§ 69-24-17. Penalties for deficient analysis; determination of commercial values.

(1) If the analysis shall show that any soil or plant amendment falls short of the guaranteed analysis in any one (1) soil or plant amending ingredient, or in total soil or plant amending ingredients, beyond "investigational allowances" as established by regulation, a penalty of three (3) times the commercial value of such deficiency shall be assessed against the registrant by the commissioner on all the products represented by the sample analyzed.

(2) All penalties assessed under this section shall be paid to the commissioner within thirty (30) days after the date of notice to the registrant from the Department of Agriculture and Commerce. The commissioner shall deposit the amount of the penalty into the General Funds account of the State Treasury.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsection (1) and (2) above.

(4) The penalties payable in subsections (1) and (2) above shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant paying said civil penalties.

(5) For the purpose of determining commercial values to be applied under the provisions of this section, the commissioner shall determine from the registrant's sales invoice the values charged for the soil or plant amending ingredients. If no invoice is available or if the invoice fails to provide sufficient information, the commissioner may use other methods to determine values. The values so determined shall be used in determining and assessing penalties.

SOURCES: Laws, 1978, ch. 322, § 9, eff from and after July 1, 1978.

§ 69-24-19. Misbranding.

No person shall distribute a misbranded soil or plant amendment. A soil or plant amendment shall be deemed to be misbranded if:

(a) its labeling is false or misleading in any particular;

(b) if it is distributed under the name of another soil or plant amendment;

(c) if it is not labeled as required in Sections 69-24-7 and 69-24-9 and in accordance with regulations prescribed under this chapter;

(d) if it purports to be or is represented as a soil or plant amendment or represented as containing a soil or plant amendment, unless such soil or plant amendment conforms to the definitions of identity, if any, prescribed by regulation. In the adopting of such regulations, the commissioner and State Chemist shall give due regard to commonly accepted definitions and official terms such as those issued by the Association of American Plant Food Control Officials; or

(e) if it does not conform to ingredient form, minimums, labeling and investigational allowances in the regulations adopted by the commissioner and State Chemist.

SOURCES: Laws, 1978, ch. 322, § 10, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 49, 50.

CJS. 3 C.J.S., Agriculture § 93.

§ 69-24-21. Adulteration.

No person shall distribute an adulterated soil or plant amendment. A soil or plant amendment shall be deemed to be adulterated if:

(a) it contains any deleterious or harmful agent in sufficient amount to render it injurious to beneficial plant, human, animal or aquatic life when applied in accordance with directions for use on the label, or if adequate warning statements and directions for use, which may be necessary to protect plant, human, animal or aquatic life are not shown upon the label;

(b) if its composition falls below or differs from that which it is purported to possess by its labeling; or

(c) if it contains unwanted crop or weed seed, or primary noxious or secondary noxious weed seed.

SOURCES: Laws, 1978, ch. 322, § 11, eff from and after July 1, 1978.

§ 69-24-23. "Stop sale, use or removal" orders.

The commissioner may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of soil or plant amendment and to hold at a designated place, when the commissioner finds said soil or plant amendment is offered or exposed for sale in violation of any of the provisions of this chapter, until the law has been complied with and said soil or plant amendment is released in writing by the commissioner, or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the soil or plant amendment so withdrawn when the requirements of the provisions of the chapter have been complied with and all costs and expenses incurred in connection with the withdrawal from sale have been paid.

SOURCES: Laws, 1978, ch. 322, § 12, eff from and after July 1, 1978.

§ 69-24-25. Violations; notice; hearings; penalties; warnings; injunctive relief.

(1) If it shall appear from the examination of any soil or plant amendment that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the commissioner shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken. Any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the commissioner and State Chemist. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the commissioner and State Chemist may certify the facts to the proper prosecuting attorney.

(2) Any person convicted of violating any provision of this chapter or the rules and regulations issued thereunder shall be guilty of a misdemeanor and punished as provided for in Section 99-19-31. Appeals from convictions under this subsection shall be as in other cases at law.

(3) Nothing in this chapter shall be construed as requiring the commissioner, State Chemist or their representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when they believe that the public interests will be best served by a suitable notice of warning in writing.

(4) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond.

SOURCES: Laws, 1978, ch. 322, § 13, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 49, 50.

CJS. 3 C.J.S., Agriculture §§ 94 et seq.

§ 69-24-27. Adoption and enforcement of rules and regulations.

The commissioner and State Chemist may adopt, amend or repeal rules and regulations relating to sampling, analytical methods, forms, minimum percentage, soil or plant amending ingredients, exempted materials, investigational allowances, definitions, records, labels, labeling, liability bond, misbranding, mislabeling and the distribution of soil or plant amendments as may be necessary to carry into effect the full intent and meaning of this chapter.

SOURCES: Laws, 1978, ch. 322, § 14; Laws, 2004, ch. 518, § 2, eff from and after July 1, 2005.

CHAPTER 25

Plants, Plant and Bee Diseases

Article 1. Division of Plant Industry; Plant Diseases and Pests ... 69-25-1
Article 2. Administrative Hearing Procedure for Bureau of Plant Industry ... 69-25-51
Article 3. Bee Diseases ... 69-25-101

ARTICLE 1.

DIVISION OF PLANT INDUSTRY; PLANT DISEASES AND PESTS.

SEC.
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§ 69-25-1. Definitions.

For the purpose of this article, the following terms shall be construed, respectively, to mean:

Division of Plant Industry — means the Bureau of Plant Industry within the Regulatory Office of the Mississippi Department of Agriculture and Commerce.

Insect pests — means insects or other invertebrates injurious to plants and plant products.

Noxious weed — means a plant species or classified group of plants declared by the Bureau of Plant Industry to be a public nuisance or to be especially injurious to the environment, to agricultural and horticultural production or to wildlife and which should be controlled and the dissemination of which prevented.

Plant diseases — means fungi, bacteria, nematodes and viruses injurious to plants and plant products and the pathological condition in plants and plant products caused by fungi, bacteria, nematodes and viruses. This definition shall also include plants which are parasitic or partially parasitic on other plants such as "witch weed", Striga asiatica, a serious parasitic plant of corn and other members of the grass family.

Plants and plant products — Trees, shrubs, seedlings, vines, forage and cereal plants, and all other plants; cuttings, grafts, scions, buds and all other parts of plants and fruits, vegetables, roots, bulbs, seeds, wood, timber and all other plant products.

Places — Vessels, cars and other vehicles, buildings, docks, nurseries, orchards and other premises, where plants and plant products are grown, kept or handled.

Persons — Individuals, associations, partnerships and corporations.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382b; 1930, § 6958; 1942, § 4979; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 2; Laws, 1991, ch. 530, § 19; Laws, 2003, ch. 401, § 1, eff from and after July 1, 2003.

Cross References — Definitions relating to agricultural seeds, see § 69-3-1.

§ 69-25-3. Bureau of plant industry; advisory board.

The State Plant Board is abolished and its duties are transferred to the Commissioner of Agriculture and Commerce, and it shall henceforth be known as the Bureau of Plant Industry.

There is created an Advisory Board to the Bureau of Plant Industry, composed of the following: the State Chemist; the head of the Entomology and Plant Pathology Department, Mississippi State University of Agriculture and Applied Science; the head of the Plant and Soil Science Department, Mississippi State University of Agriculture and Applied Science; Alcorn State University Director of Agriculture and Applied Sciences; and, for a period of two (2) years, the following: one (1) soil conservation district commissioner appointed by the commissioner; two (2) residents of Mississippi who engage in the production of any crop, appointed by the commissioner; one (1) resident of the State of Mississippi who is a commercial applicator holding a license issued under the rules and regulations of the Bureau of Plant Industry, appointed by the commissioner; one (1) resident of the State of Mississippi who is a restricted use pesticide registrant or an employee of such person, appointed by the commissioner; one (1) resident of the State of Mississippi who is either a wholesale or retail horticulturist, appointed by the commissioner, and one (1) resident of the State of Mississippi who is a licensed landscape contractor, appointed by the commissioner, who shall serve with no compensation and whose duties are to advise the commissioner on all matters regarding the Bureau of Plant Industry. The commissioner shall meet annually with the advisory board and the Director of the Bureau of Plant Industry. It is the intent and purpose of this section to maintain the domicile of this division of the Department of Agriculture and Commerce at Mississippi State University of Agriculture and Applied Science, Mississippi State, Mississippi.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382c; 1930, § 6957; 1942, § 4978; Laws, 1920, ch. 252; Laws, 1968, ch. 247, § 1; Laws, 1971, ch. 446, § 1 1979, ch. 338, § 2; Laws, 1991, ch. 519, § 1; Laws, 1995, ch. 577, § 1; Laws, 2000, ch. 372, § 1; Laws, 2003, ch. 401, § 2, eff from and after July 1, 2003.

Cross References — Authority of commissioner to make and enforce regulations, see §§ 69-19-1, 69-23-9, 69-25-7.

No rule or regulation adopted under the terms of Article 3 of Chapter 21 to be effective unless first approved by the Advisory Board of the Bureau of Plan Industry, see § 69-21-109.

Use of pesticide registration fees by Division of Plant Industry and Department of Environmental Quality to carry out program of protecting underground water resources from pesticides, and advisory board's approval of cancellation or suspension of pesticide registration, see § 69-23-7.

Cancellation or suspension of pesticide registration on ground of imminent hazard, by Commissioner of Environmental Quality, with approval of advisory board provided for in this section, see § 69-23-7.

Duty of advisory board to approve regulations to carry out the Pesticide Application Law, see § 69-23-109.

Use of fertilizer registration fees by Division of Plant Industry and Department of Environmental Quality to carry out program of protecting underground water resources from fertilizers, see § 75-47-7.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

§ 69-25-5. Director of the Bureau of Plant Industry; State Entomologist.

The Commissioner of Agriculture and Commerce shall appoint a full-time executive secretary and director, hereinafter called the "Director of the Bureau of Plant Industry," whose office shall be at Mississippi State University of Agriculture and Applied Science. The director shall serve at the will and pleasure of the commissioner and shall receive a salary in an amount to be determined by the commissioner. It shall be the duty of the director to enforce the rules and regulations adopted by the commissioner and to perform such other functions that may be assigned to him by the commissioner.

The Commissioner of Agriculture and Commerce and the Director of the Bureau of Plant Industry shall appoint a full-time State Entomologist, who shall be a qualified entomologist and whose office shall be at Mississippi State University of Agriculture and Applied Science.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382c; 1930, § 6957; 1942, §§ 4978, 4978.5; Laws, 1920, ch. 252; Laws, 1968, ch. 247, § 1; Laws, 1971, ch. 446, §§ 1, 24; Laws, 1972, ch. 369, § 1; Laws, 2000, ch. 372, § 2; Laws, 2003, ch. 401, § 3, eff from and after July 1, 2003.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

§ 69-25-7. Powers and duties of commissioner.

(1) The Commissioner of Agriculture and Commerce may conduct inspections and promulgate and enforce quarantine regulations as may be necessary in carrying out the provisions of this article.

(2)(a) The Commissioner of Agriculture and Commerce shall, from time to time, make rules and regulations for carrying out the provisions and requirements of this article, including rules and regulations under which his inspectors and other employees shall:

(i) Inspect places, plants and plant products, and things, and substances used or connected therewith;

(ii) Investigate, control, eradicate and prevent the dissemination of insect pests, diseases and noxious weeds; and

(iii) Supervise or cause the treatment, cutting and destruction of plants and plant products and other things infested or infected therewith.

(b) No rule or regulation shall be effective unless first submitted to and approved by the advisory board established under the provisions of Section 69-25-3.

(c) The inspectors and employees employed by the commissioner may carry out and execute the regulations and orders of the commissioner and under direction of the commissioner carry out the provisions of this article.

(3) To carry out the provisions of this article, the commissioner or his representative may enter into compacts and memorandums of agreement and/or understanding with governmental agencies or private organizations. The Bureau of Plant Industry may establish statewide or regional cooperative weed management areas for any or all of the weeds listed as noxious under officially promulgated regulations. Under such authority, the Bureau of Plant Industry may serve as lead agency in establishing control and/or eradication programs for regulated pests and noxious weeds and actively seek grants and external resources to provide matching resources for other avenues of funding.

SOURCES: Codes, Hemingway's 1921 Supp. §§ 6382d, 6382h; 1930, §§ 6959, 6963; 1942, §§ 4980, 4984; Laws, 1920, ch. 252; Laws, 1971, ch. 446, §§ 3, 7; Laws, 2003, ch. 401, § 4; Laws, 2008, ch. 358, § 1, eff from and after passage (approved Mar. 26, 2008.)

Cross References — Services available from Mississippi State Chemical Laboratory, see §§ 57-21-1 et seq.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 32 et seq.

CJS. 3 C.J.S., Agriculture §§ 47 et seq.

§ 69-25-9. Duties of commissioner and persons having knowledge of infected plants.

The Commissioner of Agriculture and Commerce shall keep himself informed as to known varieties of insect pests, diseases and noxious weeds, their origin, locality, nature and appearance thereof, the manner in which they are disseminated, and approved methods of treatment and eradication.

The Commissioner of Agriculture and Commerce, in his rules and regulations made pursuant to this article, shall list the insect pests, diseases and noxious weeds, of which he shall find that the introduction into, or the dissemination within, this state should be prevented in order to safeguard the environment, agricultural and horticultural production and the plants and plant products of this state, together with the plants and plant products and other things likely to become infested or infected with such insect pests, diseases and noxious weeds. Every such insect pest, disease and noxious weed listed, and every plant and plant product and other thing infected therewith, is hereby declared to be a public nuisance. Every person who has knowledge of the presence of any insect pest, disease or noxious weed listed, as required by this section, in the rules and regulations made pursuant to this article, in or upon any place, shall immediately report same to the commissioner or an inspector therefor giving such detailed information relative thereto as he may have. Every person who deals in or engages in the sale of plants and plant products or other things infested or infected, or likely to be or become so shall furnish to the commissioner or his inspectors, when requested, a statement of the names and addresses of the persons from whom and the localities where he purchased or obtained such plants and plant products, and other things infested or infected, or likely to be or become so.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382g; 1930, § 6962; 1942, § 4983; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 6; Laws, 2003, ch. 401, § 5, eff from and after July 1, 2003.

§ 69-25-10. Cultivation of certain nonnative plant species for purposes of fuel production without special permit prohibited.

(1) The purpose and intent of this section is to control and restrict the planting and cultivation of nonnative species of plants in this state which may become invasive or constitute a nuisance. This section shall apply retroactively to existing plantings of nonnative species.

(2) No individual or entity, commercial or noncommercial, may cultivate a nonnative plant species, including a genetically engineered plant, for purposes of fuel production or purposes other than agriculture, in plantings greater in

size than one (1) acre, except under a special permit issued by the Department of Agriculture and Commerce. Requests for a permit authorized under this section may be denied if the department, in conjunction with specialists at Mississippi State University, determines that the plant is invasive or has potential to constitute a nuisance.

(3) Each application for a special permit must be accompanied by a surety bond, the name of the plant to be cultivated, a legal description of the lands to be under cultivation and the estimated cost of removing and destroying such plants. Permits issued under this section shall be effective for one (1) year, and upon the expiration thereof, shall be required to be renewed by the holder of the permit for continued cultivation of the nonnative plant species. If an individual or entity cultivates more than one (1) nonnative plant species, then a permit must be acquired for each nonnative plant species in the manner required by this subsection.

(4) The surety bond shall be written by a company qualified to do business in this state and in an amount to be determined by the department. The bond shall be conditioned to secure the payment of all costs incurred in removing and destroying the plants cultivated under this permit.

(5) The department shall establish by regulation the circumstances under which it may order the permit holder to remove and destroy the nonnative plant species cultivated under the permit and the procedures to be followed in such cases. The department shall have the right to use the emergency procedures described in Section 69-25-61, in addition to all other rights and remedies available to it, at law or in equity. When the department enters an order requiring the removal and destruction of the subject plants, the permit holder and/or the surety on its bond shall move with dispatch to comply with the order of removal and destruction.

(6) The department shall have the right to enter the permit holder's lands or premises at any time and investigate the operations covered by this permit, to include the power to inspect and copy business and cultivation records, inspect plants, take samples of plants, soil or other substances and take photographs.

(7) The department shall have the right to adopt any and all rules and regulations as may be necessary or desirable to carry out the purpose and intent of this section.

SOURCES: Laws, 2012, ch. 502, § 4, eff from and after July 1, 2012.

§ 69-25-11. Inspections and quarantine; enforcement of.

The inspections and the quarantine enforcement referred to in this article shall be conducted under the direction of the Commissioner of Agriculture and Commerce by the Director of the Bureau of Plant Industry and the State Entomologist at Mississippi State University of Agriculture and Applied Science and such assistants as may become necessary. It shall be the duty of the Director of the Bureau of Plant Industry and the State Entomologist to make recommendations to the commissioner regarding quarantines and regulations.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382e; 1930, § 6960; 1942, § 4981; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 4; Laws, 2003, ch. 401, § 6, eff from and after July 1, 2003.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 28, 29, 32, 39 et seq.

CJS. 3 C.J.S., Agriculture § 52.

§ 69-25-13. Inspectors may be employed.

For the purpose of carrying out the provisions of this article, the Commissioner of Agriculture and Commerce may employ, prescribe the duties of, and fix the compensation of, such inspectors and other employees as he may require and incur such expenses as may be necessary, within the limits of appropriations made by law. He shall cooperate with other departments, boards and officers of this state and of the United States as far as practicable.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382f; 1930, § 6961; 1942, § 4982; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 5, eff from and after July 1, 1971.

§ 69-25-15. How infected or defective plants and products dealt with.

Whenever an inspection made pursuant to this article discloses that any places, or plants, or plant products or things or substances used or connected therewith, are infested or infected with any insect, pest, disease or noxious weed listed as a public nuisance, or are dead or of stock so seriously weakened by drying, excessive heat or cold, or any other condition that makes it unable to grow satisfactorily when given reasonable care, as required above herein, in the rules and regulations made pursuant hereto, written notice thereof shall be given the owner or other person in possession or control of the place where found and such owner or other person shall proceed to control, eradicate or prevent the dissemination of such insect, pest, disease or noxious weed, and to remove, cut or destroy infested and infected plants and plant products, or dead or dying plants, or things or substances used or connected therewith, within the time and in the manner prescribed by said notice or the said rules and regulations. Whenever such owner or other person cannot be found, or shall fail, neglect or refuse to obey the requirements of said notice and the rules and regulations so made, such requirements shall be carried out by inspectors or other employees of the Commissioner of Agriculture and Commerce as the law allows.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382i; 1930, § 6964; 1942, § 4985; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 8; Laws, 1974, ch. 380; Laws, 2003, ch. 401, § 7, eff from and after July 1, 2003.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 39 et seq.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1 et seq. (abatement of agricultural nuisances).

CJS. 3 C.J.S., Agriculture §§ 52 et seq.

§ 69-25-17. How proscribed plants and products may be shipped.

It shall be unlawful for any person to bring or cause to be brought into this state any plant or plant product or other thing listed as required above herein, in the rules and regulations made pursuant hereto, unless thereby plainly and legibly marked thereon or affixed thereto, or on or to the car or other vehicle carrying, or the bundle, package or other container of the same, in a conspicuous place, a statement or a tag or other device showing the names and addresses of the consignors or shippers and the consignee or person to whom shipped, the general nature and quantity of the contents, and the name of the locality where grown or shipped, together with a certificate of inspection of the proper official of the state, territory, district or county from which it was brought or shipped, showing that such plant or plant product or other thing or substance was found or believed to be free from insect pests, diseases and noxious weeds, and any other information required by the Commissioner of Agriculture and Commerce such as certificates of fumigation.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382j; 1930, § 6965; 1942, § 4986; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 9; Laws, 2003, ch. 401, § 8, eff from and after July 1, 2003.

§ 69-25-19. Unlawful to ship and deal in proscribed plants before inspection.

It shall be unlawful for any person to sell, give away, carry, ship, or deliver for carriage or shipment within this state, any plants or plant products or other thing or substitute listed, as required in such rules and regulations made by the Commissioner of Agriculture and Commerce unless such plant or plant products or other thing or substance have been officially inspected and a certificate issued by an inspector of the commissioner stating that the plants or plant products or other thing or substance have been inspected and found to be apparently free from insect pests, diseases and noxious weeds, and any other facts provided for in the rules and regulations made pursuant to this statute. For the issuance of such certificate, the commissioner may require the payment of a reasonable fee to cover the expense of such an inspection and certification provided, however, that if such plants or plant products or other thing or substance were brought into the state in compliance with the requirements of law such certificate required may be accepted in lieu of the inspection and certificate required by this section in such cases as shall be provided for in the rules and regulations made hereunder. If it shall be found at any time that a certificate of inspection issued or accepted pursuant to the provisions of this section is being used in connection with plants and plant products or other things or substances which are infested or infected with insect pests, diseases or noxious weeds listed in the rules and regulations, its further use may be prohibited, subject to such inspection and other dispositions of the plants and plant product involved as may be provided for by the commissioner. All monies collected by the commissioner where not otherwise provided shall be deposited in the State Treasury to the credit of the General Fund revenue receipts.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382k; 1930, § 6966; 1942, § 4987; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 10; Laws, 2003, ch. 401, § 9, eff from and after July 1, 2003.

§ 69-25-21. Suspected plants or products; information to be furnished commissioner.

Any person in this state who receives from without the state any plant or plant product, or other thing or substance as to which the requirements of section next before the last above have not been complied with, or who receives any plant or plant product, or other thing or substance, sold, given away, carried, shipped, or delivered for carriage or shipment within this state as to which the requirements of next foregoing section have not been complied with, shall immediately inform the Commissioner of Agriculture and Commerce or an inspector thereof and isolate and hold the plant or plant product or other thing or substance unopened or unused subject to such inspection and other disposition as may be provided for by the commissioner.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382l; 1930, § 6967; 1942, § 4988; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 11; Laws, 2003, ch. 401, § 10, eff from and after July 1, 2003.

§ 69-25-23. Infected localities outside of state; shipments from prohibited.

Whenever the Commissioner of Agriculture and Commerce finds that there exists outside of this state any destructive or nuisance insect pest, disease or noxious weed, the commissioner may give public notice thereof, specifying the locations, the plants and the plant products infested, infected or declared noxious and which are likely to become infested or infected therewith. In order to safeguard the environment, agricultural and horticultural production, plants and plant products, the movement of such plants or plant products or other things or substances into this state from the infected or infested locality shall thereafter be prohibited until the commissioner determines that the danger of the introduction into this state of such insect pests, diseases or noxious weeds from such locality has ceased to exist.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382m; 1930, § 6968; 1942, § 4989; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 12; Laws, 2003, ch. 401, § 11, eff from and after July 1, 2003.

§ 69-25-25. Infected localities within this state; how dealt with.

Whenever the Commissioner of Agriculture and Commerce shall find that there exists in this state, or any part thereof, any insect pest, disease or noxious weed, and that its dissemination should be controlled or prevented, the commissioner shall give public notice thereof, specifying the plants or plant products or other thing or substance infested, infected or declared noxious or likely to become infested or infected therewith, and the movement, planting or other use of any such plant or plant product, or other thing or substance specified in such notice as likely to carry and disseminate such insect pest, disease or noxious weed, except under such conditions as shall be prescribed by the commissioner as to inspection, treatment and disposition, shall be prohibited within such area as may be designated in the public notice until the commissioner shall find that the danger of the dissemination of such insect pest, disease or noxious weed has ceased to exist, of which the commissioner shall give public notice.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382n; 1930, § 6969; 1942, § 4990; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 13; Laws, 2003, ch. 401, § 12, eff from and after July 1, 2003.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS. 3 C.J.S., Agriculture §§ 47 et seq.

§ 69-25-27. Shipment through the state may be prohibited.

By virtue of the powers conferred herein and for the purpose of protecting the environment, agricultural and horticultural production, the plant life and plant products of this state, the Commissioner of Agriculture and Commerce may prevent and prohibit the introduction into the state for the purpose of transportation through the state of any such plants and plant products or other things or substance hereinbefore mentioned to the same extent and for the same purpose and with the same authority that is provided above with reference to the introduction of the same into the state.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382u; 1930, § 6976; 1942, § 4997; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 20; Laws, 2003, ch. 401, § 13, eff from and after July 1, 2003.

§ 69-25-29. How shipments through the state may be made.

The Commissioner of Agriculture and Commerce for the same purposes and in the same manner and with the same authority, as provided in Section

69-25-27, may prohibit and prevent the introduction into or the transportation through the state of any such plants and plant products or other thing or substance except when contained in such container, car, boat, or vehicle and shall prevent the escape or waste of any part of the same while being introduced into or transported through the state, and may likewise prohibit and prevent the opening of such container, car, boat, or vehicle containing such plant or plant product or other thing or substance within the state.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382v; 1930, § 6977; 1942, § 4998; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 21, eff from and after July 1, 1971.

§ 69-25-31. Reciprocal agreements.

The Commissioner of Agriculture and Commerce shall have power to make reciprocal agreements with the responsible officials of other states under which nursery stock or plants from any other state may be sold or delivered in Mississippi under the same conditions required for the sale or delivery of Mississippi nursery stock or plants in the state concerned.

SOURCES: Codes, 1942, § 4999; Laws, 1936, ch. 203; Laws, 1971, ch. 446, § 22, eff from and after July 1, 1971.

§ 69-25-33. Boards of supervisors and municipal governing bodies may appropriate money to cooperate with the commissioner.

The boards of supervisors in the various counties of the state and the governing bodies in the various municipalities of the state are hereby authorized and empowered, in their discretion, to appropriate money out of the general funds of the counties and municipalities to be used for the purpose of cooperating with the Commissioner of the Department of Agriculture and Commerce in eradicating serious insect pests, rodents, plant parasites, plant diseases and noxious weeds and in protecting the counties and municipalities from serious insect pests, rodents, plant parasites, plant diseases and noxious weeds.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382x; 1930, § 6978; 1942, § 5000; Laws, 1920, ch. 219; Laws, 1958, ch. 149; Laws, 1971, ch. 446, § 23; Laws, 1972, ch. 369, § 2; Laws, 2003, ch. 401, § 14, eff from and after July 1, 2003.

Cross References — Promotion of agriculture by county extension department and board of supervisors, see § 19-5-63.

Eradication of fire ants by county, see § 19-9-99.

§ 69-25-35. Suspected premises and article may be examined.

For the purpose of carrying out the provisions and requirements of this article, and of the rules and regulations made, and notices given, pursuant thereto, the Commissioner of Agriculture and Commerce and his inspectors and employees shall have power to enter in or upon any place, and to open any bundle, package or other container containing or thought to contain plants or plant products.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382o; 1930, § 6970; 1942, § 4991; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 14, eff from and after July 1, 1971.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 28, 29, 32, 38 et seq.

CJS. 3 C.J.S., Agriculture §§ 48 et seq.

§ 69-25-37. Remedy of person affected.

Any person affected by any rule or regulations made, or notice given, pursuant to this article, may have a review thereof by the Commissioner of Agriculture and Commerce for the purpose of having such rule, regulation or notice modified, suspended or withdrawn. Such review shall be allowed and considered and the cost thereof fixed, assessed, collected and paid in such manner and in accordance with such rules and regulations as may be prescribed by the commissioner.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382p; 1930, § 6971; 1942, § 4992; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 15, eff from and after July 1, 1971.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 43.

CJS. 3 C.J.S., Agriculture § 53.

§ 69-25-39. Act of agent or officer deemed the act of principal or company.

In construing and enforcing the provisions of this article, omission or failure of any official, agent or other person acting for or employed by any association, partnership, or corporation within the scope of his employment of office shall, in every case, also be deemed the act, omission or failure of such association, partnership or corporation as well as that of the person.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382r; 1930, § 6973; 1942, § 4994; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 17, eff from and after July 1, 1971.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 46.

CJS. 3 C.J.S., Agriculture §§ 53 et seq.

§ 69-25-41. Commissioner or any of his employees may sue out injunctions.

The Commissioner of Agriculture and Commerce or any of his inspectors or employees shall be a proper party in any court of equity to effectively carry out any of the provisions of this article when an injunction would be a proper remedy.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382s; 1930, § 6974; 1942, § 4995; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 18, eff from and after July 1, 1971.

§ 69-25-43. This article not to conflict with any act of Congress.

The provisions of this article shall not be so construed or enforced as to conflict in any way with any act of Congress regulating the movement of plants or plant products in interstate or foreign commerce.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382t; 1930, § 6975; 1942, § 4996; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 19, eff from and after July 1, 1971.

§ 69-25-45. Enforcement of rules and regulations.

The Commissioner of Agriculture and Commerce shall have power and authority to enforce his rules, ordinances and regulations in any court of competent jurisdiction by civil, as well as criminal proceedings, and if the remedy to be pursued be by writ of injunction, no court of this state shall have right previous to a trial upon the merits to set aside such writ on bond. It shall be the duty of the attorney general, district attorneys and county attorneys to represent said commissioner whenever called upon to do so. Said commissioner in the discharge of his duties and the enforcement of the powers herein delegated, may send for books and papers, administer oaths, hear witness, etc., and to that end it is made the duty of the various sheriffs throughout the state to serve all summons and other papers upon the request of said commissioner.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382q; 1930, § 6972; 1942, § 4993; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 16, eff from and after July 1, 1971.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 28, 29, 32, 38 et seq.

CJS. 3 C.J.S., Agriculture §§ 47 et seq.

§ 69-25-47. Penalty for violations.

(1) Any person who shall violate any provisions or requirements of this article, or of the rules and regulations made or of any notice given pursuant thereto or shall forge, counterfeit, deface, destroy or wrongfully use any certificate provided for herein or in the rules and regulations made pursuant thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof

shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment at the discretion of the court having jurisdiction.

(2) In addition to the criminal penalty imposed under subsection (1) of this section, each violation of this article or the applicable rules and regulations established by the commissioner pertaining hereto shall subject the violator to administrative action as provided in Sections 69-25-51 through 69-25-63.

SOURCES: Codes, Hemingway's 1921 Supp. § 6382q; 1930, § 6972; 1942, § 4993; Laws, 1920, ch. 252; Laws, 1971, ch. 446, § 16 eff from and after July 1, 1971; Laws, 2003, ch. 401, § 15; Laws, 2012, ch. 502, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added (2).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 2.

ADMINISTRATIVE HEARING PROCEDURE FOR BUREAU OF PLANT INDUSTRY.

SEC.

69-25-51. Alleged violation of rules and regulations of Bureau of Plant Industry; right to hearing; Director of the Bureau of Plant Industry as reviewing officer; determination; penalty.
69-25-53. Hearing procedure; decision of hearing committee.
69-25-55. Repealed
69-25-57. Jurisdiction of Commissioner of Agriculture and Commerce.
69-25-59. Judicial review.
69-25-61. Emergency procedure when herbicide or insecticide violation presents clear and present danger to public health, safety or welfare; Department of Agriculture and Commerce authorized to issue emergency orders prior to hearing.
69-25-63. Payment and enforcement of penalties; fees and costs.
69-25-65. Repealed

§ 69-25-51. Alleged violation of rules and regulations of Bureau of Plant Industry; right to hearing; Director of the Bureau of Plant Industry as reviewing officer; determination; penalty.

(1) When any administrative allegation or charge is made against a person for violating the rules and regulations of the Bureau of Plant Industry of the Mississippi Department of Agriculture and Commerce or the laws under Sections 69-19-1 through 69-19-15, Sections 69-21-101 through 69-21-128, Sections 69-23-1 through 69-23-135, Sections 69-25-1 through 69-25-47 or Sections 69-25-101 through 69-25-109, Mississippi Code of 1972, the Director of the Bureau of Plant Industry, or his designee, shall act as the reviewing officer. The complaint must be in writing, signed by the person making the

charge, and filed in the office of the Bureau of Plant Industry. The department shall send a copy of the complaint and any supporting documents to the person accused along with a summons requiring the accused to respond to the allegations within thirty (30) days. The notification shall be accomplished by any of the methods provided for in Rule 4 of the Mississippi Rules of Civil Procedure or by certified mail. If the accused does not respond within the thirty-day period, he shall be considered to be in default. Upon receipt of the response and any supporting documents from the accused, the reviewing officer shall determine the merits of the complaint. The reviewing officer may meet informally with the accused and discuss the alleged violation with him.

(2) If the reviewing officer determines that the complaint lacks merit, he may dismiss the complaint.

(3) If the reviewing officer determines that there is substantial evidence that a violation has occurred or if the accused admits to the truth of the allegations upon which the complaint is based, the reviewing officer may impose an appropriate penalty on the accused, which may be any or all of the following:

(a) Issue a warning letter.

(b) Suspend, modify, deny, cancel or revoke any license or permit granted by the department to the accused.

(c) Issue a stop sale order with regard to any pesticide, plant or other material regulated by the department that is mislabeled or otherwise not in compliance with applicable law or regulations.

(d) Require the accused to relabel any pesticide, plant or other material regulated by the department that is mislabeled.

(e) Seize any pesticide, plant or other material regulated by the department and sell, destroy or otherwise dispose of the material and apply the proceeds of the sale to the state's expenses and any fees or penalties levied under this article.

(f) Refuse to register, cancel or suspend the registration of a pesticide, plant or other material that is not in compliance with any applicable law or regulation.

(g) Levy a civil penalty in an amount not to exceed Five Thousand Dollars ($5,000.00) for each violation.

In determining the amount of the penalty, the reviewing officer shall consider the appropriateness of the penalty for the particular violation, the effect of the penalty on the person's ability to continue in business and the gravity of the violation.

(4) If the accused requests a hearing with the department, in writing, within thirty (30) days from receipt of the decision of the reviewing officer, the commissioner shall appoint three (3) members of the advisory board to the Bureau of Plant Industry to act as a hearing committee and a hearing shall be scheduled. If the accused fails to request a hearing within the thirty-day period, the decision of the reviewing officer is final.

SOURCES: Laws, 1992, ch. 474, § 1; Laws, 2005, ch. 533, § 1; Laws, 2008, ch. 353, § 1; Laws, 2009, ch. 515, § 17; Laws, 2012, ch. 502, § 2, eff from and after July 1, 2012.

Editor's Note — Section 69-19-11 referred to in (1) was repealed by Laws, 1997, ch. 449, § 5, eff from and after passage (approved March 25, 1997). For current provisions, see § 69-19-15.

Amendment Notes — The 2012 amendment added "Sections 69-25-1 through 69-25-47 or Sections 69-25-101 through 69-25-109" in the first sentence in (1).

Cross References — Mississippi Administrative Procedures Law, see generally §§ 25-43-1 et seq.

Bureau of Plant Industry, see generally §§ 69-25-1 et seq.

Civil penalty for violation of statute set forth in this section, see § 69-25-61.

Procedure for notification and summons under the Mississippi Rules of Civil Procedure, see Miss. R. Civ. P. 4.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. 2d, Administrative Law §§ 287 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Forms 74, 75 (notice of complaint and of alleged violation).

CJS. 73 C.J.S., Public Administrative Law and Procedure § 146.

§ 69-25-53. Hearing procedure; decision of hearing committee.

(1) Within a reasonable time after the accused's request for a hearing, the hearing committee shall conduct an evidentiary hearing. For good cause shown, the hearing committee may grant a continuance of the hearing. Written notice of the date, time and place of such hearing shall be delivered to the accused not less than fifteen (15) days prior to the hearing.

(2) A court reporter shall be in attendance and shall record the proceedings. The hearing committee shall have the right and duty to impose reasonable restrictions as it may deem necessary or appropriate to insure an orderly, expeditious and impartial proceeding. The parties may offer oral testimony through witnesses and shall have the right of cross-examination. The rules of evidence shall be relaxed.

(3) At the hearing, the hearing committee may administer oaths and receive evidence, either oral or documentary. Upon the request of either party, the Department of Agriculture and Commerce may issue subpoenas to compel the attendance of witnesses or the production of books, papers, records or other documentary evidence. If a person fails to comply with a subpoena issued by the department, either party may invoke the aid of any court of general jurisdiction of this state. The court may order such person to comply with the requirements of the subpoena. Failure to comply with the order of the court may be treated as contempt.

(4) At the conclusion of the hearing, the hearing committee shall render a written decision incorporating the findings of facts, conclusions of law and penalty, if any. The hearing committee may impose any penalty authorized

under Section 69-25-51. A copy of the decision of the hearing committee shall be delivered to the accused by certified mail.

SOURCES: Laws, 1992, ch. 474, § 2; Laws, 2005, ch. 533, § 2, eff from and after July 1, 2005.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. 2d, Administrative Law §§ 298, 301 et seq.

1A Am. Jur. Pl & Pr (Rev), Administrative Law, Forms 111-112 (demand for hearing); 113-115 (notice of hearing).

CJS. 73A C.J.S., Public Administrative Law and Procedure §§ 251 et seq.

§ 69-25-55. Repealed.

Repealed by Laws of 2005, ch. 533, § 36 effective from and after July 1, 2005.

[Laws, 1992, ch. 474, § 3, eff from and after July 1, 1992.]

Editor's Note — Former § 69-25-55 provided that the failure to request a timely hearing constituted a waiver of the right to a hearing.

§ 69-25-57. Jurisdiction of Commissioner of Agriculture and Commerce.

The Commissioner of Agriculture and Commerce shall have jurisdiction over all persons and property necessary to administer and enforce the provisions of this article and he may adopt rules and regulations to implement the provisions of this article.

SOURCES: Laws, 1992, ch. 474, § 4; Laws, 2005, ch. 533, § 3, eff from and after July 1, 2005.

§ 69-25-59. Judicial review.

(1) Any individual aggrieved by a final decision of the hearing committee shall be entitled to judicial review.

(2) An appeal from the decision of the hearing committee shall be made by filing a written notice of appeal with the circuit court clerk of the county where the accused resides, or in the case of a nonresident accused, in the Circuit Court of the First Judicial District of Hinds County. The notice of appeal and the payment of costs must be filed and paid with the circuit clerk, within thirty (30) days of the entry of the order being appealed. The appeal shall otherwise be conducted in accordance with existing laws and rules.

(3) Any party aggrieved by the action of the circuit court may appeal to the Mississippi Supreme Court in the manner provided by law and rules.

SOURCES: Laws, 1992, ch. 474, § 5; Laws, 2005, ch. 533, § 4, eff from and after July 1, 2005.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Forms 201 et seq.

CJS. 73A C.J.S., Public Administrative Law and Procedure §§ 313 et seq.

§ 69-25-61. Emergency procedure when herbicide or insecticide violation presents clear and present danger to public health, safety or welfare; Department of Agriculture and Commerce authorized to issue emergency orders prior to hearing.

(1) When a violation occurs, or is about to occur, that presents and clear and present danger to the public health, safety or welfare and requires immediate action, the commissioner, department field inspectors, or any person authorized by the commissioner, may issue an order to be effective immediately, prior to notice and a hearing, that imposes any or all of the following penalties against the accused:

(a) A stop sale order for any pesticide, plant or other material regulated by the department that is mislabeled or otherwise not in compliance with applicable law or regulations.

(b) Require the accused to relabel any pesticide, plant or other material regulated by the department that is mislabeled.

(c) Seize any pesticide, plant or other material regulated by the department and sell, destroy or otherwise dispose of such material and apply the proceeds of such sale to the state's expenses and any fees or penalties levied.

(d) Refuse to register, or cancel or suspend the registration of a pesticide, plant or other material that is not in compliance with any applicable law or regulation.

The order shall be served upon the accused in the same manner that the summons and complaint may be served upon him, except that, in the alternative, it may be served by giving a copy of the order to the attendant or clerk at the accused's establishment. The accused shall then have thirty (30) days after service of the order to request an informal administrative review before the Director of the Bureau of Plant Industry, or his designee, who shall act as reviewing officer. If the accused requests a review within thirty (30) days, the reviewing officer shall conduct an informal administrative review within ten (10) days after the request is made. If the accused does not request an informal administrative review within thirty (30) days, then he is deemed to have waived his right to a review. At the informal administrative review, subpoena power shall not be available, witnesses shall not be sworn nor be subject to cross-examination and there shall be no court reporter or record made of the proceedings. Each party may present its case in the form of documents or oral statements. The rules of evidence shall not apply. The reviewing officer's decision shall be in writing, and it shall be delivered to the parties by certified mail.

If either party is aggrieved by the order of the reviewing officer, he may request a full evidentiary hearing before the hearing committee in accordance with the procedures in Sections 69-25-51 and 69-25-53. The request for an evidentiary hearing must be made with the department within thirty (30) days of receipt of the decision of the reviewing officer. Failure to request an evidentiary hearing within the thirty (30) days is deemed a waiver of such right. If either party is aggrieved by the decision of the hearing committee, he shall have the right of judicial review in circuit court and in the Supreme Court as provided in Section 69-25-59.

SOURCES: Laws, 1992, ch. 474, § 6; Laws, 2005, ch. 533, § 5, eff from and after July 1, 2005.

§ 69-25-63. Payment and enforcement of penalties; fees and costs.

When any penalty assessed by the hearing officer or committee is not paid, the department may file suit in a court of competent jurisdiction for the purpose of reducing the order of the hearing officer or committee to judgment, and if successful on the merits, the department shall be entitled to an award for reasonable attorney's fees and court costs.

SOURCES: Laws, 1992, ch. 474, § 7; Laws, 2005, ch. 533, § 6, eff from and after July 1, 2005.

RESEARCH REFERENCES

CJS. 73A C.J.S., Public Administrative Law and Procedure §§ 481 et seq.

§ 69-25-65. Repealed.

Repealed by Laws of 2005, ch. 533, § 37 effective from and after July 1, 2005.

[Laws, 1992, ch. 474, § 8, eff from and after July 1, 1992.]

Editor's Note — Former § 69-25-65 provided that the administrative hearing procedure did not apply to aerial applicators of pesticides.

ARTICLE 3.

BEE DISEASES.

SEC.
69-25-101. Shipment of bees into State; requirement of certificate or permit.
69-25-103. Department of Agriculture and Commerce empowered to deal with Africanized bees and bee diseases.
69-25-105. Authority to make inspections and to order removal, destruction or treatment of Africanized or infected bees.
69-25-107. Shipment of suspected materials may be prohibited.
69-25-109. Penalty for violations of this article.

§ 69-25-101. Shipment of bees into State; requirement of certificate or permit.

All honey bees shipped or moved into the State of Mississippi shall be accompanied by a certificate of inspection signed by the State Entomologist, State Apiary Inspector or corresponding official of the state or country from which such bees are shipped or moved. Such certificate shall certify to the apparent freedom of the bees and their combs and hives, from contagious and infectious diseases and parasites and must be based upon an actual inspection of the bees themselves within a period of sixty (60) days preceding the date of shipment; provided, that when honey bees are to be shipped into this state from other states or countries wherein no official apiary inspector or State Entomologist is available, the Mississippi Department of Agriculture and Commerce may issue permit for such shipment upon presentation of suitable evidence showing such bees to be free from disease. The provisions of this section shall not apply to shipments of live bees in wire cages, when without combs of honey.

SOURCES: Codes, Hemingway's 1921 Supp. § 3636b; 1930, § 6979; 1942, § 5001; Laws, 1920, ch. 209; Laws, 1972, ch. 369, § 3; Laws, 1991, ch. 329, § 1; Laws, 1991, ch. 530, § 20, eff from and after July 1, 1991.

RESEARCH REFERENCES

ALR. Liability for injury or damage caused by bees. 86 A.L.R.3d 829.

Beekeeping regulation: validity and construction. 55 A.L.R.4th 1223.

§ 69-25-103. Department of Agriculture and Commerce empowered to deal with Africanized bees and bee diseases.

The Mississippi Department of Agriculture and Commerce shall have full and plenary power to deal with Africanized honey bees (Apris mellifera scutellata) and with American and European foul brood, and all other contagious or infectious diseases and parasites of honey bees which, in its opinion, may be prevented, controlled or eradicated; and shall have full power and is hereby authorized to make, promulgate and enforce such rules, ordinances and regulations and to perform such acts, through its agents or otherwise, as in its judgment may be necessary to control, eradicate or prevent the introduction, spread or dissemination of Africanized honey bees and all contagious diseases of honey bees and parasites as far as may be possible and all such rules, ordinances and regulations of said department shall have the force and effect of law.

SOURCES: Codes, Hemingway's 1921 Supp. § 3636c; 1930, § 6980; 1942, § 5002; Laws, 1920, ch. 209; Laws, 1972, ch. 369, § 4; Laws, 1991, ch. 329, § 2; Laws, 1991, ch. 530, § 21, eff from and after July 1, 1991.

RESEARCH REFERENCES

ALR. Beekeeping regulation: validity and construction. 55 A.L.R.4th 1223.

§ 69-25-105. Authority to make inspections and to order removal, destruction or treatment of Africanized or infected bees.

The Mississippi Department of Agriculture and Commerce, its agents and employees, shall have authority to enter any depot, express office, storeroom, warehouse or premises for the purpose of inspecting any honey bees or beekeeping fixtures or appliances therein or thought to be therein, for the purpose of ascertaining whether said bees or fixtures are infected with any contagious or infectious disease or parasite or which they may have reason to believe are Africanized bees or have been or are being transported in violation of any of the provisions of this article.

The said department through its agents or employees may require the removal from this state of any honey bees or beekeeping fixtures which have been brought into the state in violation of the provisions of this article, or if finding any honey bees or fixtures infected with any contagious or infectious disease or parasite or if finding that such bees are Africanized or if such bees or fixtures have been exposed to danger of infection by such diseases, may require the destruction, treatment or disinfection of such infected or exposed bees, hives, fixtures or appliances.

SOURCES: Codes, Hemingway's 1921 Supp. § 3636d; 1930, § 6981; 1942, § 5003; Laws, 1920, ch. 209; Laws, 1972, ch. 369, § 5; Laws, 1991, ch. 329, § 3; Laws, 1991, ch. 530, § 22, eff from and after July 1, 1991.

RESEARCH REFERENCES

ALR. Beekeeping regulation: validity and construction. 55 A.L.R.4th 1223.

Am Jur. 37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

§ 69-25-107. Shipment of suspected materials may be prohibited.

The shipment or movement into this state of any used or secondhand beehives, honey combs, frames or other beekeeping fixtures is hereby prohibited except under such rules and regulations as may be prescribed by the Mississippi Department of Agriculture and Commerce.

SOURCES: Codes, Hemingway's 1921 Supp. § 3636e; 1930, § 6982; 1942, § 5004; Laws, 1920, ch. 209; Laws, 1972, ch. 369, § 6; Laws, 1991, ch. 530, § 23, eff from and after July 1, 1991.

RESEARCH REFERENCES

ALR. Beekeeping regulation: validity and construction. 55 A.L.R.4th 1223.

§ 69-25-109. Penalty for violations of this article.

(1) Any person, firm or corporation violating any of the provisions of this article or of the rules or regulations of the Mississippi Department of Agriculture and Commerce, adopted in accordance with the provisions thereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment for not more than six (6) months in the county jail.

(2) In addition to the criminal penalty imposed under subsection (1) of this section, each violation of this article or the applicable rules and regulations established by the commissioner pertaining hereto shall subject the violator to administrative action as provided in Sections 69-25-51 through 69-25-63.

SOURCES: Codes, Hemingway's 1921 Supp. § 3636f; 1930, § 6983; 1942, § 5005; Laws, 1920, ch. 209; Laws, 1972, ch. 369, § 7; Laws, 1991, ch. 530, § 24; Laws, 2012, ch. 502, § 3, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added (2)..

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 26

Pest Control Compact

Sec.
69-26-1. Pest Control Compact.
69-26-2. State government agencies may cooperate with Insurance Fund.
69-26-3. Bylaws and amendments to be filed with Commissioner of Agriculture and Commerce.
69-26-4. Mississippi compact administrator; duties.
69-26-5. Request for assistance from Insurance Fund.
69-26-6. Reimbursement of expenditures for Compact control or eradication program.
69-26-7. "Executive head" defined.

§ 69-26-1. Pest Control Compact.

The Pest Control Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

PEST CONTROL COMPACT

Article I

Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this Compact, the annual loss of approximately One Hundred Thirty-seven Billion Dollars ($137,000,000,000.00) from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

Article II

Definitions

As used in this Compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) "Requesting state" means a state which invokes the procedures of the Compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article.

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.

(e) "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this Compact.

(f) "Governing Board" means the administrators of this Compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this Compact.

(g) "Executive committee" means the committee established pursuant to Article V(e) of this Compact.

Article III

The Insurance Fund

There is hereby established a Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this Compact. The Insurance Fund shall contain monies appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this Compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this Compact.

Article IV

The Insurance Fund, Internal Operations and Management

(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the

Governing Board and the Executive Committee pursuant to this Compact shall be deemed the actions of the Insurance Fund.

(b) The members of the Governing Board shall be entitled to one vote on such board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board is cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(g) The Insurance Fund may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and to rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this Compact.

Article V

Compact and Insurance Fund Administration

(a) In each party state there shall be a Compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the Compact in his state; and
2. Represent his state on the Governing Board of the Insurance Fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefore within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or the Executive Committee thereof.

(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the Compact, supervising and giving direction to the expenditure of monies from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

(e) The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such

Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

Article VI

Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this Compact.
2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this Compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use monies available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the Compact.
2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.
3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the

expenditures being made or budgeted therefore, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the Compact in the particular instance can be abated by a program undertaken with the aid of monies from the Insurance Fund in one (1) year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the Governing Board may require consistent with the provisions of this Compact.

(d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the Compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this Compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefore shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty (20) days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this Compact may receive monies from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of monies from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

Article VII

Advisory and Technical Committees

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations upon request of the Governing Board or Executive Committee. An advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI(d) of the Compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

Article VIII

Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI(d) of this Compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of monies from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

Article IX

Finance

(a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for a presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The request for appropriations shall be apportioned among the party states as follows: one-tenth (1/10) of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all monies not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of monies requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any monies in the Claims Account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such monies are available to meet demands arising out of the claims.

(d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with monies available to it under Article IV(g) of this Compact, provided that the Governing Board take specific action setting aside such monies prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of monies available to it under Article IV(g) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of monies by the party states adequate to meet the same.

(e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and report of the audit shall be included in and become part of the annual report of the Insurance Fund.

(f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

Article X

Entry Into Force and Withdrawal

(a) This Compact shall enter into force when enacted into law by any five (5) or more states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two (2) years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article XI

Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

SOURCES: Laws, 2006, ch. 442, § 1, eff from and after July 1, 2006.

Comparable Laws from other States — Arkansas: A.C.A. § 2-16-901 et seq.
Florida: Fla. Stat. § 570.345.
Louisiana: La. R.S. 3:3396.1 et seq.
Tennessee: Tenn. Code Ann. § 43-6-301 et seq.
Texas: Tex. Agric. Code § 79.001 et seq.

§ 69-26-2. State government agencies may cooperate with Insurance Fund.

Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the Insurance Fund established by the Pest Control Compact.

SOURCES: Laws, 2006, ch. 442, § 2, eff from and after July 1, 2006.

§ 69-26-3. Bylaws and amendments to be filed with Commissioner of Agriculture and Commerce.

Pursuant to Article IV(h) of the Compact, copies of bylaws and amendments thereto shall be filed with the Commissioner of Agriculture and Commerce.

SOURCES: Laws, 2006, ch. 442, § 3, eff from and after July 1, 2006.

§ 69-26-4. Mississippi compact administrator; duties.

The Compact administrator for this state shall be Commissioner of Agriculture and Commerce. The duties of the Compact administrator shall be deemed a regular part of the duties of this office.

SOURCES: Laws, 2006, ch. 442, § 4, eff from and after July 1, 2006.

§ 69-26-5. Request for assistance from Insurance Fund.

Within the meaning of Article VI(b) or VIII(a), a request or application for assistance from the Insurance Fund may be made by the Commissioner of Agriculture and Commerce or the Governor whenever in such official's judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

SOURCES: Laws, 2006, ch. 442, § 5, eff from and after July 1, 2006.

§ 69-26-6. Reimbursement of expenditures for Compact control or eradication program.

The department, agency or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the Compact shall have credited to his account, in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.

SOURCES: Laws, 2006, ch. 442, § 6, eff from and after July 1, 2006.

§ 69-26-7. "Executive head" defined.

As used in this Compact, with reference to this state, the term "executive head" shall mean the Governor.

SOURCES: Laws, 2006, ch. 442, § 7, eff from and after July 1, 2006.

CHAPTER 27

Soil Conservation

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Article 3. Federal Aid Projects 69-27-101
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Article 1.

Districts.

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69-27-63. Discontinuance of districts.
69-27-65. Certain counties authorized to lease road machinery for soil conservation work.
69-27-67. Counties may contribute to soil conservation districts.
69-27-69. Controlling effect of article.

§ 69-27-1. Short title.

This article may be known and cited as the "Soil and Water Conservation District Law."

SOURCES: Codes, 1942, § 4940; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 1, eff from and after January 1, 1969.

Cross References — State Forestry Commission, see §§ 49-19-1 et seq.
Surface mining and reclamation of land, see §§ 53-7-1 et seq.
Definition of "soil and water conservation district", see § 69-27-301.

ATTORNEY GENERAL OPINIONS

The Tunica County Soil and Water Conservation District is authorized to implement a beaver control program as a "preventive and control measure" under Miss. Code Ann. § 69-27-35(c). County boards of supervisors are authorized to expend public funds to eradicate and control beaver populations. Dulaney, March 23, 2007, A.G. Op. #07-00150, 2007 Miss. AG LEXIS 62.

RESEARCH REFERENCES

ALR. What constitutes impairment of proposed intervenor's interest to support intervention as matter of right under Rule 24(a)(2) of Federal Rules of Civil Procedure in environmental actions. 76 A.L.R. Fed. 762.

§ 69-27-2. State Soil and Water Conservation Committee renamed; transfer of powers and duties to State Soil and Water Conservation Commission.

The State Soil and Water Conservation Committee is hereby renamed the State Soil and Water Conservation Commission. The State Soil and Water Conservation Commission shall retain all powers and duties as were accorded to the committee, and wherever the term "State Soil and Water Conservation Committee" or "committee" appears in any law heretofore or hereafter enacted, the same shall be construed to mean the State Soil and Water Conservation Commission.

SOURCES: Laws, 1974, ch. 357, § 1, eff from and after passage (approved March 14, 1974).

§ 69-27-3. Legislative determinations and declarations of policy.

It is hereby declared, as a matter of legislative determination:

(a) **The condition.** — That good soil and usable water are essential to the success of agricultural activities in the State of Mississippi; that our farms, forests and grazing lands are among the basic assets of the state; and that the preservation of these lands and usable waters is necessary to protect and promote the health, safety and prosperity of the people.

That improper land usage causes the breaking of natural cover, and results in serious soil erosion of the farms, forests and grazing lands by uncontrolled waters; that erosion feeds itself, causing an accelerated washing of sloping fields and pastures, speeding up with the removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erodible subsoil; that failure by any landowner or operator to conserve the soil and water and control erosion upon his lands causes a washing of soil from his lands onto other lands and makes the conservation of soil and water and control of erosion on such other lands difficult or impossible; that good soil and water usage is possible only through joint actions of farmers, ranchers and foresters made possible through legislative action.

(b) **The consequences.** — That the consequences of such soil erosion in the form of soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors and the movement of silt into creeks, rivers, ponds, lakes and bayous contributing to the pollution of the surface waters of the state; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific process for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground and surface water reserve, which causes water shortages, intensifies periods of drought and causes crop failures; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings and other property from floods; and losses in navigation, hydro-electric power, municipal water supply, farming and grazing. Other consequences are the loss of surface soil and water because of the denuding of the forests, and the abuse and erosion of sloping lands; the declining mean low flow of the rivers reducing the amount of surface water available seasonally for beneficial use; the decrease in effectiveness and decline of ground water reaching aquifers which provide a source of water for beneficial use; and the increase in rates of runoff from sloping land, adding to flood damage of the flood plains and valleys of the state; all adding to the drainage problem.

(c) **The appropriate corrective methods.** — That to conserve soil and water resources and control and prevent soil erosion, it is necessary that practices contributing to soil and water wastage and soil erosion be discouraged and discontinued, and appropriate water and soil conserving practices be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check dams, dikes, ponds, lakes, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; afforestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erodible areas and areas now badly gullied or otherwise eroded.

(d) **Declaration of policy.** — It is hereby declared to be the policy of the legislature to provide for the conservation of the water and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, prosperity, and general welfare of the people of this state.

It is further declared to be the policy of the legislature to alleviate and prevent flood damage; to conserve the waters of the state through improvement and cover, and through impoundments and effective use for various beneficial purposes; to develop private lands and waters of the state for recreational purposes; to promulgate soil and water conservation practices and measures which beautify the landscape, and promote the economic welfare of communities, counties, and areas of the state; and to provide leadership through soil and water conservation districts to other governmental agencies, departments and private groups in the promotion of the conservation of land, water, and related resources.

SOURCES: Codes, 1942, § 4941; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 2, eff from and after January 1, 1969.

Cross References — Conservation and development of water resources, see §§ 51-3-1 et seq.

Preparation of plans for developing state, see §§ 57-1-1 et seq.

ATTORNEY GENERAL OPINIONS

The Tunica County Soil and Water Conservation District is authorized to implement a beaver control program as a "preventive and control measure" under Miss. Code Ann. § 69-27-35(c). County boards of supervisors are authorized to expend public funds to eradicate and control beaver populations. Dulaney, March 23, 2007, A.G. Op. #07-00150, 2007 Miss. AG LEXIS 62.

§ 69-27-5. Levee districts excepted.

None of the provisions of this article shall apply to any county which is in whole or in part within a levee district bordering on the Mississippi River, unless an order has been passed by the board of supervisors of such county after thirty (30) days notice by publication of its intention so to do.

SOURCES: Codes, 1942, § 4955; Laws, 1938, ch. 253.

§ 69-27-7. Definitions.

Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

(a) "District" or "soil and water conservation district" means a governmental subdivision of this state, and a public body, corporate and politic, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(b) "Commissioner" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(c) "Committee" or "State Soil and Water Conservation Committee" means the state and soil and water conservation commission as renamed under the provisions of Section 67-27-2 and created in Section 69-27-9.

(d) "Petition" means a petition filed under the provisions of Section 69-27-15 for the creation of a district.

(e) "Nominating petition" means a petition filed under the provisions of Section 69-27-31 to nominate candidates for the office of commissioner of a soil and water conservation district.

(f) "State" means the State of Mississippi.

(g) "Agency of this state" includes the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state.

(h) "United States" or "agencies of the United States" includes the United States of America, the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(i) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(j) "Landowner" or "owner of land" includes any person, firm or corporation who shall hold legal or equitable title to any lands lying within a district organized under the provisions of this article.

(k) "Land operator" or "operator of land" includes any person, firm or corporation, other than the owner, who shall be in possession of any lands lying within a district organized under the provisions of this article, whether as lessee, renter, tenant or otherwise.

(*l*) "Due notice" means notice published at least three (3) times with an interval of at least seven (7) days between each publication date, in a newspaper of general circulation within the area where the land proposed to be included in a conservation district is located, or if no such newspaper or general circulation be available, by posting at a reasonable number (not less than five (5)) of conspicuous places within such area, such posting to include posting one (1) copy upon the bulletin board of the courthouse of each county where any of the lands in such proposed district may be located. Notice shall also be given by United States mail to all of the landowners of the proposed district or the district of any hearing or election. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

SOURCES: Codes, 1942, § 4942; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 3; Laws, 1974, ch. 357, § 2, eff from and after passage (approved March 14, 1974).

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-9. State Soil and Water Conservation Commission; members; compensation; seal, records, rules and regulations.

(1) The State Soil and Water Conservation Commission shall be constituted as follows:

(a) Eleven (11) voting members:

(i) The Commissioner of Agriculture and Commerce;

(ii) The State Forester;

(iii) The President of the Mississippi Association of Soil and Water Conservation District Commissioners;

(iv) The first vice president of the association;

(v) The second vice president of the association;

(vi) The immediate or most recent ex-president of the association willing and able to serve; and

(vii) Five (5) members to be elected from the membership of the soil and water conservation district commissioners at the annual meeting of the association, one (1) from each United States congressional district by a caucus of the association members from each congressional district as constituted at the time of the caucus, to be elected as follows: First

District, one (1) member elected for a one-year term, beginning January 1, 1968, and ending January 1, 1969, his successor to be similarly elected at the 1968 annual meeting of the association for a three-year term ending January 1, 1972, and each successor elected in the succeeding third annual meeting for a three-year term; Second District, one (1) member elected for a two-year term beginning January 1, 1968, and ending January 1, 1970, his successor to be similarly elected at the 1969 annual meeting of the association for a three-year term ending January 1, 1973, and each successor elected in the succeeding third annual meeting for a three-year term; Third District, election to be similar to the Second District; Fourth District, one (1) member elected for a three-year term beginning January 1, 1968, and ending January 1, 1971, each successor to be similarly elected at the succeeding third annual meeting for a three-year term; Fifth District, election to be similar to Fourth District.

(viii) The elected members of the board as constituted on January 15, 2003, shall continue to serve until the expiration of their respective terms. As the terms of the five (5) members expire, the members shall be elected as follows: one (1) member from each congressional district by caucus of the association members from each congressional district as constituted at the time of the caucus and the remainder to be elected from the state at large by the membership of the association. The position and term of the member elected from the Third District whose term expires January 1, 2004, shall be the term and position of the at large member.

(b) The purpose of the above procedure is to provide that when put into effect, elected members will serve three-year staggered terms. The State Soil and Water Conservation Commission is empowered to adopt and carry out procedures for filling unexpired terms of its elected members. The incumbent will continue to serve until his successor is duly qualified and enters into the duties of his office.

(c) Two (2) members shall serve ex officio and without voting power, but with all privileges of discussion and debate as follows:

(i) The Director of the State Extension Service; and

(ii) The Director of the State Agricultural and Forestry Experimental Station.

(d) Such nonvoting ex officio member who, due to the pressure of his other required official duties, believes that he will be unable to regularly attend meetings of the commission shall designate a substitute to attend in his stead with the same rights and privileges that he would have had.

(2) The commission shall designate its chairman and vice chairman and may, from time to time, change such designation. A majority of the voting members of the commission shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The voting members of the commission shall receive a per diem at the uniform rate established in Section 25-3-69, Mississippi Code of 1972, for their services on the commission for not more than thirty-six (36) days in any one calendar year. In addition, and in the discretion of the commission, all

members may be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the commission, not to exceed the rate established in Section 25-3-41, Mississippi Code of 1972, for state officers and employees. The commission may provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements by the State Auditor.

(3) The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this article.

SOURCES: Codes, 1942, § 4943; Laws, 1938, ch. 253; Laws, 1960, ch. 158; Laws, 1968, ch. 246, § 4; Laws, 1972, ch. 437, § 1; Laws, 1974, ch. 357, § 3; Laws, 1989, ch. 367, § 1; Laws, 2003, ch. 356, § 1, eff from and after passage (approved Mar. 12, 2003.)

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

Cross References — Duties and powers of state forester, generally, see § 49-19-3.

Duties of commissioner, generally, see § 69-1-13.

ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

§ 69-27-11. Soil and Water Conservation Commission employees; office of accommodations.

The State Soil and Water Conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the Attorney General of the state for such legal services as it may require, or may employ its own counsel and legal staff. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees such powers and duties as it may deem proper. The committee shall supply itself with suitable office accommodations at Mississippi State University of Agriculture and Applied Science or at Jackson, or at any place where the committee shall designate. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard for the needs of the agency to which the request is directed, assign or detail to the committee, members of the staff or personnel of such agency or institution of learning, the duty of making such special reports, surveys or studies as the committee may request.

SOURCES: Codes, 1942, § 4943; Laws, 1938, ch. 253; Laws, 1960, ch. 158; Laws, 1968, ch. 246, § 4, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-13. General duties and powers of Commission.

The State Soil and Water Conservation Commission shall have the following duties and powers:

(a) To offer any assistance as may be appropriate to the commissioners of soil and water conservation districts in the carrying out of their powers and programs.

(b) To keep the commissioners of each of the districts informed of the activities and experience of all other districts, and to facilitate cooperation between districts.

(c) To coordinate the programs of the soil and water conservation districts.

(d) To secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts.

(e) To disseminate information concerning the activities and programs of the soil and water conservation districts, and to encourage the formation of districts.

(f) To seek and receive grants of monies, and other assets, from any source to carry out this article.

(g) To distribute any appropriated or other funds or assets under its control, from state, federal or other governmental agencies or political subdivisions, or from private grants, including matching funds to districts.

(h) To establish and administer qualification standards for district commissioners and officers.

(i) To give guidance and overall supervision to districts when assistance is requested, or acceptable.

(j) To study, classify and evaluate land use needs and problems in the State of Mississippi; to make recommendations leading to adoption of land use policy and broad guidelines for meeting the needs and problems so identified.

(k) To demonstrate to landowners and operators within the state, equipment that will demonstrate energy and soil and water conservation.

(*l*) To enter into and to authorize the executive director to execute with the approval of the commission, contracts, grants, cooperative agreements and memoranda of understanding with any federal or state agency or subdivision thereof, or any public or private institution location inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the purposes of this article.

(m) To cooperate with the Commission on Environmental Quality in addressing agricultural nonpoint source pollution. Subject to Section 49-17-13, Mississippi Code of 1972, the Commission on Environmental Quality and the commission shall enter into a memorandum of understanding which shall establish the commission's role in nonpoint source pollution issues.

SOURCES: Codes, 1942, § 4943; Laws, 1938, ch. 253; Laws, 1960, ch. 158; Laws, 1968, ch. 246, § 4; Laws, 1972, ch. 437, § 1; Laws, 1993, ch. 541, § 1; Laws, 1996, ch. 390, § 1, eff from and after July 1, 1996.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

Cross References — Duties and powers of state forester, generally, see § 49-19-3.

Surface mining and reclamation of land, see §§ 53-7-1 et seq.

Duties of commissioner, generally, see § 69-1-13.

§ 69-27-14. Wildflower Seed Revolving Fund.

(1) There is hereby created in the State Treasury a fund designated as the Wildflower Seed Revolving Fund to be used by the Mississippi Soil and Water Conservation Commission to contract for the purchase of wildflower seeds from public or private providers, for resale to local conservation districts or other governmental entities for planting programs.

(2) The Wildflower Revolving Fund shall be funded by monies received from the sale of seeds to the local conservation districts or other governmental entities. Monies collected from the sales shall be deposited into the Wildflower Revolving Fund. The State Treasurer shall make disbursements for payment of purchase of wildflower seeds upon requisition by the Soil and Water Conservation Commission and upon the issuance of warrants by the Department of Finance and Administration.

SOURCES: Laws, 1996, ch. 443, § 1, eff from and after July 1, 1996.

§ 69-27-15. Soil and Water Conservation districts; petition for creation.

Any twenty-five (25) owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State Soil and Water Conservation Committee asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(a) The proposed name of said district.

(b) That there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition.

(c) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(d) A request that the State Soil and Water Conservation Committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the State Soil and Water Conservation Committee may consolidate all or any such petitions.

SOURCES: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-17. Soil and water conservation districts; hearing and determination of necessity therefor.

Within sixty (60) days after a petition pursuant to Section 69-27-15 has been filed with the State Soil and Water Conservation Committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity in the interest of public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this article, and upon all questions relevant to such inquiries. All owners and all operators of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing water and land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefit such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil and water conservation districts already organized or proposed for organization under the provisions of this article, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in Section 69-27-3. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After twelve (12) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon. If it be determined that there is no need for such soil and water conservation district, then in no event shall any expense or part thereof, incurred in connection with the hearing or other proceedings had to determine such question, be assessed against any landowner or other party except those landowners signing the original petition.

SOURCES: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-19. Soil and water conservation districts; referendum; commission to pay expenses.

(1) After the committee has made and recorded a determination that there is need, in the interest of public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this article is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "for creation of a soil and water conservation district of the lands below described and lying in the county(ies) of ________ and ________," and "against creation of a soil and water conservation district of the lands below described and lying in the county(ies) of ________ and ________," shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the

other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All owners of lands lying within the boundaries of the territory, as determined by the state soil and water conservation committee, shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote.

(2) The committee shall pay expenses for the issuance of such notices and the conduct of such hearings and referendums as hereinabove provided for and shall supervise the conduct of such hearings and referendums. It shall issue appropriate regulations governing the conduct of such hearings and referendums, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the results thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

SOURCES: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-21. Results of referendum; determination of district's administrative feasibility.

The committee shall publish the results of a referendum held pursuant to the provisions of this article and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitude of the owners and operators of lands lying within the defined boundaries, the number of landowners eligible to vote in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners of the proposed district, the probable expenses of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in Section 69-27-3, but the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district. In the event a majority of the votes cast in the referendum shall not have been cast in favor of the creation of such district, then in no event shall any of the expenses incident to the conduct of the referendum, investigation or other proceedings had in connection therewith be assessed against any party other than such parties as signed the original petition.

SOURCES: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-23. Organization of soil and water conservation district; procedure; certificate of due organization.

(1) If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) commissioners to act, with the three (3) commissioners elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

The two (2) appointed commissioners shall present to the Secretary of State an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals): (a) that a petition for the creation of the district was filed with the State Soil and Water Conservation Committee pursuant to the provisions of this article, and that the proceedings specified in this article were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this article; and that the committee has appointed them as commissioners; (b) the name and official residence of each of the commissioners, together with a certified copy of the appointments evidencing their right to office; (c) the term of office of each of the commissioners; (d) the name which is proposed for the district; and (e) the location of the principal office of the commissioners of the district. The application shall be subscribed and sworn to by each of the said commissioners before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the State Soil and Water Conservation Committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee.

The Secretary of State shall examine the application and statement, and, if he finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the State Soil and Water Conservation Committee, which shall thereupon submit to the Secretary of State a new name for said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body, corporate and politic. The Secretary of State shall make and issue to the said commissioners a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the State Soil and Water Conservation Committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this article.

(2) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of the aforesaid sections upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate duly certified by the Secretary of State shall be admissible in evidence in any such action or proceeding and shall be proof of the filing and contents thereof. However, the procedural steps required for the issuance of a certificate by the Secretary of State may be attacked in any suit or proceeding involving the validity or enforcement of or relating to any contract, proceeding, or action of the district.

SOURCES: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

ATTORNEY GENERAL OPINIONS

The two appointed members of a county soil and water conservation board have the same authority as the three elected members. Ladner, Mar. 10, 2006, A.G. Op. 06-0004.

The appointed commissioners of a county soil and water conservation district do not have a vote in appointments of successors. Ladner, Mar. 10, 2006, A.G. Op. 06-0004.

The commissioners, by majority vote, may delegate to the chairman and/or other commissioners, agents or employees, including the appointed commissioners, the power and authority to sign checks on behalf of a county soil and water conservation district. Ladner, Mar. 10, 2006, A.G. Op. 06-0004.

§ 69-27-24. Authority of municipalities to contribute to soil conservation districts.

(1) The governing authorities of an incorporated municipality within this state are authorized and empowered, in their discretion, to make contributions to the various soil conservation districts either now or hereafter located entirely or partially within the county in which the municipality is situated.

(2) This section is intended to be cumulative and not to repeal or limit or abridge any laws in this state which provide for assistance to soil conservation districts.

SOURCES: Laws, 1991, ch. 310, § 1, eff from and after July 1, 1991.

Cross References — Authority of counties to contribute to soil conservation districts, see § 69-27-67.

§ 69-27-25. Subsequent petitions may be filed twelve months after the negative determination.

After twelve (12) months shall have expired from the date of entry of a determination by the State Soil and Water Conservation Committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this article.

SOURCES: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-27. Inclusion of additional territory within existing district.

Petitions for including additional territory within an existing district may be filed with the State Soil and Water Conservation Committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this article for petitions to organize a district. Where the total number of landowners in the area proposed for inclusion shall be less than twenty-five (25), the petition may be filed when signed by a majority of the owners of such area, and in such cases no referendum need be held. In referendums upon petitions for such inclusion, only owners of land lying within the proposed additional area shall be eligible to vote.

SOURCES: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-29. Cities and towns, etc., to be included within district.

All cities, towns, villages or other urban or suburban areas lying within the boundaries of a soil and water conservation district established pursuant to the provisions of the state soil and water conservation district law, as amended, with the approval of the governing authorities of said cities, towns or villages, shall be included in and deemed a part of the district.

SOURCES: Codes, 1942, § 4944; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 5, eff from and after January 1, 1969.

§ 69-27-31. Election of three commissioners for each district.

Within thirty (30) days after the date of issuance by the Secretary of State of a certificate of organization of a soil and water conservation district, nominating petitions may be filed with the State Soil and Water Conservation Committee to nominate candidates for commissioners of such district. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee unless it shall be subscribed by twenty-five (25) or more owners of lands lying within the boundaries of such district. Landowners may sign more than one such nominating petition to nominate more than one candidate for commissioner but in no event shall a landowner sign more than three (3) such nominating petitions. The committee is hereby authorized to enact and implement rules to provide that not more than one commissioner shall be a resident of any one county or supervisors district, unless there is no person qualified and willing to serve in another county or supervisors district. The committee shall give due notice of an election to be held for the election of three (3) commissioners for the district. The names of all nominees, on behalf of whom such nominating petitions have been filed within the time herein designated, shall appear, arranged in alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an X mark in the square before any three (3) names to indicate the voter's preference. All owners of lands lying within the district shall be eligible to vote in such election. Only such landowners shall be eligible to vote. The three (3) candidates who receive a majority of the votes cast in such an election shall be elected commissioners for such district. In the event any candidate fails to receive a majority, then the candidates receiving the largest number of votes shall run off in an election to be held two (2) weeks thereafter. The committee shall pay all the expenses of such elections, shall supervise conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein, and shall publish the results of same.

SOURCES: Codes, 1942, § 4945; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 6, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-33. Appointment, qualifications, and tenure of commissioners.

The governing body of the district shall consist of five (5) commissioners, elected or appointed as provided hereinabove. The commissioners shall be persons who are landowners and/or operators within the geographical areas of the district qualified to perform the specialized skilled services which will be required of them in the performance of their duties hereunder, and able to attend all meetings.

The commissioners shall designate a chairman annually. The term of office of each commissioner shall be three (3) years, except that the commissioners who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. A commissioner shall hold office until his successor has been elected or appointed and has qualified. Vacancies shall be filled by election or appointment as in the case of the election or appointment of other commissioners, but in the event the unexpired terms remaining of the offices vacated are less than one (1) year, said vacancy shall be filled for the unexpired term by the other commissioners. The selection of successors for a full term shall be made in the same manner in which the original retiring commissioners shall, respectively, have been selected. A majority of the commissioners shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A commissioner and any deputy commissioner shall receive no compensation for their services, but they shall be entitled to expenses, including travelling expenses, necessarily incurred in the discharge of their duties.

The commissioners may utilize the services of the county agricultural agents and the facilities of the county agricultural agents' offices insofar as practicable and feasible, and may, with the approval of the State Soil and Water Conservation Commission employ such other help as may be necessary. Employees hired pursuant to this section, upon agreement by the commissioners and the county board of supervisors, shall be considered as employees of the county or counties in which the district is located solely for the purpose of allowing such county or counties to include these employees in any group life and/or health insurance or workers' compensation insurance program maintained by the county or counties for its employees and to include these employees in the county payroll system. Upon such agreement, the county or counties shall be responsible for the payment and withholding functions for the commissioners and shall provide the employees with all required tax documents. If more than one (1) county desires to include these employees in a group life and/or health insurance or workers' compensation insurance program, the counties shall determine the program in which the employees shall be included and the amount of contributions that the other county or counties shall make to that program on behalf of the employees. Nothing in this section shall be construed to mean that these employees are to be considered as county employees for any purpose other than the purpose of including these employees in a county employee group life and/or health insurance or workers' compensation insurance program and the county's payroll system. The commissioners may call upon the Attorney General of the state for such legal services as they may require, or may use such other legal counsel as may be available. The commissioners may delegate to their chairman, to one or more commissioners, or to one or more agents, or employees, such powers and duties as they may deem proper, and may appoint such deputy commissioners as they deem appropriate, not to exceed one (1) deputy commissioner for each supervisor district in the soil and water conservation district, to assist the commissioners in the performance of their duties; however, deputy commissioners shall not be entitled to vote on any matter coming before the commissioners. The State Soil and Water Conservation Commission shall establish and administer qualification standards and establish term of office for deputy commissioners. The commissioners shall furnish to the State Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this article.

The commissioners may provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements if total annual receipts or expenditures exceeds Sixty Thousand Dollars ($60,000.00) and an annual financial statement if total annual receipts or expenditures is equal to or less than Sixty Thousand Dollars ($60,000.00).

The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

SOURCES: Codes, 1942, § 4946; Laws, 1938, ch. 253; Laws, 1962, ch. 170; Laws, 1968, ch. 246, § 7; Laws, 1986, ch. 488, § 9; Laws, 1989, ch. 490, § 1; Laws, 1990, ch. 461, § 1; Laws, 1991, ch. 332, § 1; Laws, 1997, ch. 310, § 1, eff from and after July 1, 1997; Laws, 1999, ch. 413, § 1, eff from and after July 1, 1999.

ATTORNEY GENERAL OPINIONS

A county is not responsible for paying the costs of life, health and workers' compensation insurance premiums, matching social security and medicare, retirement benefits, and like expenses for soil and water conservation district employees. Barefield, Feb. 13, 2004, A.G. Op. 03-0069.

The appointed commissioners of a county soil and water conservation district do not have a vote in appointments of successors. Ladner, Mar. 10, 2006, A.G. Op. 06-0004.

There is no statutory requirement that a commissioner of a county soil and water conservation district be a resident of or represent a particular county supervisor district. Ladner, Mar. 10, 2006, A.G. Op. 06-0004.

§ 69-27-35. Powers of districts and commissioners.

A soil and water conservation district organized under the provisions of this article shall constitute a governmental subdivision of this state, and a public body, corporate and politic, exercising public powers, and such district and the commissioners thereof shall have the following powers, in addition to others granted in other sections of this article:

(a) To conduct surveys, investigations and research relating to the character of soil erosion and the preventive and control measures needed, to publish results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures. However, in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies.

(b) To conduct demonstration projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which water and soil resources may be conserved, and soil erosion in the form of soil washing may be prevented and controlled.

(c) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection (c), Section 69-27-3, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of such lands.

(d) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or operator of lands within the district, in the carrying on of erosion control and prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this article.

(e) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, or devise, any property, real or personal, or rights or interests therein, and all such property shall be exempt from state, county, or municipal taxation; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article. Notwithstanding any provisions of general law to the contrary, no land or interest therein described under this subsection shall be acquired for recreational purposes by eminent domain proceedings after the effective date of this article.

(f) To make available, on such terms as it shall prescribe, to landowners and operators within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such landowners and operators to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion, and to purchase comprehensive insurance on such agricultural and engineering equipment.

(g) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article, with the consent of two-thirds (⅔) of the landowners owning sixty-six and two-thirds percent (66-⅔%) of all lands affected, whether the owners of such land live within such district or not.

(h) To develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion within the district, and to bring such plans and information to the attention of owners and operators of lands within the district.

(i) To acquire by purchase or lease, and to administer, any water and soil conservation, erosion-control or erosion-prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage as agent of the United States or any of its agencies, or of this state or any of its agencies, any water and soil conservation, erosion-control or erosion-prevention project within its boundaries; to act as agent for the United States or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil and water conservation, erosion-control or erosion-prevention project within its boundaries; to accept donations, gifts and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from private sources, and to use or expend such monies, services, materials, or other contributions in carrying on its operations.

(j) To assist individual landowners or operators and organized groups, associations, or other agencies or units of government to plan and establish recreational facilities for family use, income-producing purposes, or for community access.

(k) To enter into contracts with the approval of the Governor with any agency of the federal or state government or its political subdivisions to accomplish the objectives of this article.

(*l*) To collect cost-sharing funds, and to establish and implement procedures compatible with the purposes of this article for the necessary financing of water and soil conservation district activities, including the administration of any federal funds made available for the use of the district.

(m) To receive and expend funds or monies or other assets from any state or federal agency or any other source, public or private, in furtherance of the purposes of this article.

(n) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal rules and regulations not inconsistent with this article, to carry into effect its purposes and powers.

(o) As a condition to the extending of any benefits under this article to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners and operators to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(p) No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the Legislature shall specifically so state.

SOURCES: Codes, 1942, § 4947; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 8; Laws, 1972, ch. 437, § 2; Laws, 1997, ch. 309, § 1, eff from and after July 1, 1997.

Cross References — Duty of local soil and water commissioners to make survey of surface mining operations, see § 53-7-9.

Authority of governing authorities of municipalities to contribute to soil conservation districts, see § 69-27-24.

Power of commissioners to appoint deputy commissioners, see § 69-27-33.

ATTORNEY GENERAL OPINIONS

A county and a soil and water conservation district had the authority to contract to develop and implement various projects related to water management and the conservation of soil and water resources and the control and prevention of soil erosion, without the necessity of an interlocal agreement. Dulaney, February 12, 1999, A.G. Op. #99-0029.

The Tunica County Soil and Water Conservation District is authorized to implement a beaver control program as a "preventive and control measure" under Miss. Code Ann. § 69-27-35(c). County boards of supervisors are authorized to expend public funds to eradicate and control beaver populations. Dulaney, March 23, 2007, A.G. Op. #07-00150, 2007 Miss. AG LEXIS 62.

§ 69-27-37. Adoption of land-use regulations.

The commissioners of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving water and soil and soil resources and preventing and controlling soil erosion subject to the approval of and acceptance by two-thirds (⅔) of the landowners owning at least sixty-six and two-thirds per cent (66⅔) of the lands affected by such proposed regulations. Such regulations shall be compatible with state laws, particularly those related to the board of water commissioners.

The commissioners may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The commissioners shall not have authority to enact such water and land use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the owners of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the commissioners have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "for approval of proposed ordinance No. ________, prescribing land and water use regulations for conservation of soil and water and prevention of erosion" and "against approval of proposed ordinance No. ________, prescribing water and land use regulations for conservation of soil and water and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The commissioners shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All owners of land within the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The commissioners shall not have authority to enact such proposed ordinance into law unless two-thirds (⅔) of the landowners owning at least sixty-six and two-thirds per cent (66⅔%) of all lands affected by such proposed ordinance shall have voted in favor thereof. The approval of the proposed ordinance by two-thirds (⅔) of the landowners owning at least sixty-six and two-thirds per cent (66⅔%) of the land affected by such ordinance shall not be deemed to require the commissioners to enact such proposed ordinance into law. Water and land use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the commissioners of any district shall have the force and effect of law in the said district.

Any owners or operators of land within such district may at any time file a petition with the commissioners asking that any or all of the water and land use regulations prescribed in any ordinance adopted by the commissioners under the provisions of this section shall be amended, supplemented or repealed. Water and land use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of water and land use regulations. Referendums on adoption, amendment, supplementation, or repeal of water and land use regulations shall not be held more often than once in twelve (12) months.

The regulations to be adopted by the commissioners under the provisions of this section may include:

(a) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.

(b) Provisions requiring observance of particular methods of cultivation, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water conserving and erosion-preventing plants, trees, and grasses, afforestation, and reforestation.

(c) Specifications of cropping programs and tillage practices to be observed.

(d) Provisions requiring the retirement from cultivation of highly erodible areas or of areas on which erosion may not be adequately controlled if cultivation is carried on.

(e) Provisions for such other means, measures, operations, and programs as may assist conservation of water and soil resources and prevent or control soil erosion in the district having due regard to the legislative findings set forth in Section 69-27-3.

The regulations shall be uniform throughout the territory comprised within the district except that the commissioners may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of water and land use regulations adopted under the provisions of this section shall be made available to all owners and operators of lands lying within the district.

SOURCES: Codes, 1942, § 4948; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 9, eff from and after January 1, 1969.

Cross References — Preparation of plans for developing state, see §§ 57-1-1 et seq.

§ 69-27-39. Enforcement of land-use regulations.

The commissioners shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of Section 69-27-37 are being observed. The commissioners are further authorized to provide by ordinance that any landowner or operator who shall sustain damages from any violation of such regulations by any other landowner or operator may recover damages at law from such other landowner or operator for such violation.

SOURCES: Codes, 1942, § 4949; Laws, 1938, ch. 253.

§ 69-27-41. Performance of work under the regulations by the commissioners.

Where the commissioners of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of Section 69-27-37 are not being observed on particular lands, and that such violations are the proximate cause of damage to any other landowner within the district, then the commissioners may present to the chancery court of the county in which the lands of the defendant may lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant landowner or operator or both to observe such regulations, and to perform particular work, operations or avoidance as required thereby and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district and is the proximate cause of damage to other landowners within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the commissioners may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof from the defendant. Upon the filing of such petition, process shall issue against the defendant returnable in the manner provided by law, and said cause shall be tried in the manner provided by law for the trial of civil actions. The defendant may demand a trial by jury and in such event, the jurors shall have the qualifications of jurors in eminent domain proceedings in the chancery court. If the decree of the court be against the defendant, the court may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the commissioners may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and may recover the costs and expenses thereof, from the defendant. In no case, however, shall the commissioners enter upon such lands for such purpose until the court shall have found that the landowner or person in possession has not prosecuted such work as was ordered by the court with reasonable diligence. In all cases where the person in possession of lands who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court, the commissioners may file a petition with the court, a copy of which shall be served upon the defendant in the case, in the manner provided by law for service of process, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor. The court shall have jurisdiction to enter, upon a hearing to be held not sooner than five days after service of such process, its decree for the amount of such costs and expenses together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. Such decree shall when entered upon the lis pendens docket of said court, constitute a lien on the lands of the defendant.

SOURCES: Codes, 1942, § 4950; Laws, 1938, ch. 253.

RESEARCH REFERENCES

ALR. Validity of statute allowing attorneys' fees to successful claimant but not to defendant, or vice versa. 73 A.L.R.3d 515.

§ 69-27-43. Board of adjustment; members; expenses.

Where the commissioners of any district organized under the provisions of this article shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of Section 69-27-37, they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of one (1), two (2), and three (3) years, respectively. The members of each such board of adjustment shall be appointed by the State Soil and Water Conservation Committee, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the State Soil and Water Conservation Committee and the commissioners of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments, and shall be for the unexpired term of the member whose term becomes vacant. Members of the State Soil and Water Conservation Committee and the commissioners of the district shall be ineligible to appointment as members of the board of adjustment during their tenure of such other office. The members of the board of adjustment shall receive no compensation for their services but shall be entitled to expenses, including travelling expenses, necessarily incurred in the discharge of their duties. The commissioners shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

SOURCES: Codes, 1942, § 4951; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 10, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-45. Board of adjustment; procedure; meetings; records.

The board of adjustment shall adopt rules to govern its procedure, which rules shall be in accordance with the provisions of this article, and with the provisions of any ordinance adopted pursuant to Sections 69-27-43 through 69-27-49. The board shall designate a chairman from among its members, and may, from time to time, change such designation. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board shall constitute a quorum. The chairman, or in his absence such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

SOURCES: Codes, 1942, § 4951; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 10, eff from and after January 1, 1969.

§ 69-27-47. Board of adjustment; hearing on land use regulations.

Any landowner or operator may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardships in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the commissioners, and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands owned or operated by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the commissioners of the district within which his lands are located and upon the chairman of the State Soil and Water Conservation Committee. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The commissioners of the district and the State Soil and Water Conservation Committee shall have the right to appear and be heard at such hearing. Any owner or operator of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing, the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of land-use regulations in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

SOURCES: Codes, 1942, § 4951; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 10, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-49. Appeal from order of board of adjustment.

Any petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the commissioners of the district, or any intervening party, may obtain a review of such order in the chancery court of the county in which the lands of the petitioner may lie, by filing in such court a petition praying that the order of the board be modified or set aside and may demand a jury qualified in all respects as the jurors in eminent domain proceedings in the chancery court. A copy of such petition shall forthwith be served upon the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon such filing, the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein, and shall have power to grant such temporary relief as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. No contention that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such contention shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the transcript. The board may modify the findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by evidence, shall be conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review in the same manner as are other judgments or decrees of the court.

SOURCES: Codes, 1942, § 4951; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 10, eff from and after January 1, 1969.

§ 69-27-51. Cooperation between districts.

The commissioners of any two or more districts organized under the provisions of this article may cooperate with one another in the exercise of any or all powers conferred in this article.

SOURCES: Codes, 1942, § 4952; Laws, 1938, ch. 253.

JUDICIAL DECISIONS

1. In general.

Office of committeeman on an executive committee elected upon agreement of two conservation districts to co-operate is a public office within the general rule that injunction will not lie to try the right and title to a public office. Lacey v. Noblin, 238 Miss. 329, 118 So. 2d 336 (1960).

In an injunction action by one claiming to have been elected as a member of an executive committee created upon agreement of two conservation districts to cooperate, and alleging that the other defendants had refused to permit him to perform his duties and had attempted to substitute another in his place, since the allegations reflected that one other than complainant was in possession of the office and performing the duties thereof, complainant did not bring himself within the exception to the general rule that a bill for injunction will not lie to try the right and title to a public office. Lacey v. Noblin, 238 Miss. 329, 118 So. 2d 336 (1960).

§ 69-27-53. State agencies to cooperate.

Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this article. The commissioners of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted pursuant to Section 69-27-37, shall have the force and effect of law over all such publicly owned lands, and shall be in all respects observed by the agencies administering such lands.

SOURCES: Codes, 1942, § 4953; Laws, 1938, ch. 253.

Cross References — Duties and powers of Secretary of State, see § 7-11-11.
Contributions of land to soil conservation districts by counties, see § 69-27-67.

§ 69-27-55. Adjustment of boundaries or withdrawal of lands from district; consolidation with another district; petition.

Any twenty-five (25) owners of land lying within the limits of a portion of a soil and water conservation district organized under the provisions of this article may petition the State Soil and Water Conservation Committee asking that the described area be withdrawn from the present district, or that the district be dissolved, and consolidated with another district or segment of another district, and that the area withdraw or the composite area be designated as an individual soil and water conservation district, with all the powers and responsibilities designated to soil and water conservation districts by law. Such petition shall set forth:

(a) The proposed name of such district.

(b) That there is a need for adjustment of boundaries or reorganization of territory, to provide for a separate soil and water conservation district to function in the territory described in the petition, in the interest of public health, safety, and welfare.

(c) A description of the territory proposed to be included in the adjusted boundaries, or the territory to be withdrawn from an existing district, and the total territory to be included in the new district.

(d) A request that the State Soil and Water Conservation Committee duly define the boundaries for such district; that one or more public hearings be held to determine the feasibility and propriety of such changes; and that the committee determine that such adjustments be made or such district created.

Where more than one petition is filed covering parts of the same territory, the State Soil and Water Conservation Committee may consolidate all or any such petitions.

SOURCES: Codes, 1942, § 4954.5; Laws, 1968, ch. 246, § 12, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-57. Adjustment or consolidation; hearing and determination of administrative feasibility.

(1) Within sixty (60) days after a petition pursuant to Section 69-27-55 has been filed with the State Soil and Water Conservation Committee, it shall cause due notice to be given of one or more proposed hearings upon the question of the desirability and necessity in the interest of the public health, safety, and welfare, of the adjustment of the boundaries or creation of such district, upon the question of appropriate boundaries of such district, upon the propriety of the petition and other proceedings taken under this article, and upon all questions relevant to such inquiries. All owners and operators of land within the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all owners and all operators of land within the existing district or districts from which territory is being considered for withdrawal, and all other interested parties, shall have the right to attend such hearings and be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed adjusted boundary or within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area to be considered and such further hearing held.

(2) After such hearing or hearings, if the committee shall determine, upon the facts presented at such hearings and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for adjustment in the boundaries, or for withdrawing territory from an existing district for the purpose of combination with other territory or district to provide an opportunity for more effective functioning of one or more districts in the territory considered at the hearings, it shall have the power to and shall make and record such determination, and shall define, by metes and bounds, or by legal subdivisions, the boundaries of such adjusted territory, or the boundaries of such district or districts. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered, the composition of the soils, the distribution of erosion, the prevailing water and land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefit such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil and water conservation districts already organized or proposed to be organized under the provisions of this article, the relationship to existing political subdivisions of the state, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth by law.

(3) If the committee shall determine after such hearings, after due consideration of the said relevant facts, that there is no need for the

adjustment in boundary, or the revision of districts in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After twelve (12) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

(4) The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings as are deemed necessary by the committee. The committee shall supervise the conduct of all hearings provided pursuant to the provisions of this article. It shall issue appropriate regulations governing the conduct of such hearings.

(5) If the committee has decided that the adjustment of boundaries or revision of districts is needed, as provided in subsection (2) of this section, it shall have the power to make the determination, upon the facts presented at such hearings, and upon such other relevant facts and information as may be available, that the operation of a district with the adjusted boundaries, or as revised or consolidated within the defined boundaries, is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of a district within the described boundaries is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner provided in Sections 69-27-15 through 69-27-29, except that a referendum as provided therein shall not be deemed necessary, a hearing or hearings being substituted therefor.

(6) After twelve (12) months shall have expired from the date of entry of a determination by the State Soil and Water Conservation Committee that operation of a district within the adjusted boundary or revised territory is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as provided in subsection (3) of this section and action taken thereon in accordance with the provisions of Sections 69-27-55 through 69-27-61.

SOURCES: Codes, 1942, § 4954.5; Laws, 1968, ch. 246, § 12, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-59. Adjustment or consolidation; applicability and interpretation of certain provisions.

(1) All statutory provisions pertaining to the qualifications, appointment, election, and tenure of commissioners, and the powers of districts and commissioners shall apply to districts whose boundaries are revised or which are reconstituted under Sections 69-27-55 through 69-27-61.

(2) The provisions of Sections 69-27-55 through 69-27-61 shall not be interpreted to remove from office commissioners previously appointed or elected to serve existing soil and water conservation districts. However, the State Soil and Water Conservation Committee is empowered to establish rules whereby these officers will continue to serve, either in the existing district, or in the newly constituted district, until the termination date of their present term of office.

SOURCES: Codes, 1942, § 4954.5; Laws, 1968, ch. 246, § 12, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-61. Adjustment or consolidation; division of assets.

The State Soil and Water Conservation Committee shall determine from each existing soil and water conservation district from which territory may be withdrawn in the adjustment of boundaries, or revision of a district, the value of cash or bonds on hand, and shall also make an appraisal of the cash value of the equipment, land, or other property of these affected districts, on hand as of the date of issuance of the certificate of organization by the Secretary of State to the revised district, and shall divide the liquid assets on the basis of the proportion of territory withdrawn from the existing district to the total territory in the existing district, make equitable distribution of the equipment, and partition any real property. The decision of the State Soil and Water Conservation Committee in this division of assets shall be final.

SOURCES: Codes, 1942, § 4954.5; Laws, 1968, ch. 246, § 12, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-63. Discontinuance of districts.

At any time after the organization of a district under the provisions of this article, any twenty-five (25) owners of land lying within the boundaries of such district may file a petition with the State Soil and Water Conservation Committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such a petition has been received by the committee, it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ________ (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the ________ (name of the soil and water conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate such referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the commissioners of the district. In making such determination the committee shall give due regard and weight to the attitudes of the owners and operators of lands lying within the district, the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance in the district to the total number of votes cast, the approximate wealth and income of the landowners of the district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in Section 69-27-3. However, the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the State Soil and Water Conservation Committee of a certification that the committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the commissioners shall forthwith proceed to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The commissioners shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificate of the State Soil and Water Conservation Committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the commissioners a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon the issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such district shall be of no further force and effect. All contracts theretofore entered into, to which the district or commissioners are parties, shall remain in full force and effect for the period provided in such contracts. The State Soil and Water Conservation Committee shall be substituted for the district or commissioners as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the commissioners of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of Section 69-27-41, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all the rights and obligations of the district or commissioners as to such liens and actions.

The State Soil and Water Conservation Committee shall not entertain petition for the discontinuance of any district nor conduct referendums upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this section, more often than once in one (1) year.

In the event a majority of the landowners vote to dissolve a district the State Soil and Water Conservation Committee shall dissolve same.

SOURCES: Codes, 1942, § 4954; Laws, 1938, ch. 253; Laws, 1968, ch. 246, § 11, eff from and after January 1, 1969.

Editor's Note — State Soil and Water Conservation Committee renamed State Soil and Water Conservation Commission, see § 69-27-2.

§ 69-27-65. Certain counties authorized to lease road machinery for soil conservation work.

(1) In order to assist in carrying out the objectives set forth in this article, the board of supervisors of Adams, Attala, Benton, Carroll, Chickasaw, Claiborne, Clarke, Clay, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Jasper, Jefferson, Jefferson Davis, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Pike, Rankin, Scott, Simpson, Stone, Union, Walthall, Warren, Wayne, Webster, Winston, Yalobusha and Yazoo counties of the State of Mississippi are hereby authorized, in their discretion, to lease to any soil conservation district of said respective counties, as authorized in this article, any road machinery belonging to the respective counties upon reasonable terms to be agreed upon, by contract between such board and such district, entered on the minutes of the board of supervisors making the lease.

(2) Be it further provided that if no soil conservation district exists within the county that the boards of supervisors of such counties may lease, as provided in subsection (1) of this section, road machinery belonging to the

county to agricultural associations organized under the provisions of Sections 79-17-1 through 79-17-39, Mississippi Code of 1972, under the same terms and conditions as specified hereinabove for lease to soil conservation districts.

SOURCES: Codes, 1942, § 4958; Laws, 1938, Ex. ch. 63.

§ 69-27-67. Counties may contribute to soil conservation districts.

(1) The board of supervisors of any county is authorized and empowered, in its discretion, to make contributions to the various soil conservation districts either now or hereafter located entirely or partially within such county, under the provisions of this article, or elsewhere in the laws of this state.

(2) This section is intended to be cumulative and not to repeal or limit or abridge any laws in this state which provide for assistance to soil conservation districts.

SOURCES: Codes, 1942, § 4958.5; Laws, 1956, ch. 186, §§ 1, 2.

Cross References — Authority of governing authorities of municipalities to contribute to soil conservation districts, see § 69-27-24.

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A county had statutory authority to appropriate and expend monies to a soil and water conservation district where the county had a local and private bill which created a special fund from gaming revenues, 40 percent of which could be expended, among other things, for the construction, support, or maintenance of public or nonprofit water and sewer systems, storm water drainage and flood prevention, public recreation uses, etc. Dulaney, February 12, 1999, A.G. Op. #99-0029.

A county is not responsible for paying the costs of life, health and workers' compensation insurance premiums, matching social security and medicare, retirement benefits, and like expenses for soil and water conservation district employees. Barefield, Feb. 13, 2004, A.G. Op. 03-0069.

The appropriate method for the transfer of funds to a Soil and Water Conservation District is a determination left to the discretion and judgment of the board of supervisors. Barefield, Feb. 13, 2004, A.G. Op. 03-0069.

§ 69-27-69. Controlling effect of article.

In so far as any of the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

SOURCES: Codes, 1942, § 4956; Laws, 1938, ch. 253.

ARTICLE 3.

FEDERAL AID PROJECTS.

SEC.
69-27-101. Mississippi State University of Agriculture and Applied Science to administer article.

69-27-103. Plan.
69-27-105. Federal grants.
69-27-107. Powers of university.
69-27-109. Agents.
69-27-111. Reports.
69-27-113. No liability on university.

§ 69-27-101. Mississippi State University of Agriculture and Applied Science to administer article.

In order to carry out the purposes of the Soil Conservation and Domestic Allotment Act enacted by the Congress of the United States, the Mississippi State University of Agriculture and Applied Science (hereinafter referred to as the "university") is hereby designated as the agency of the State of Mississippi to administer any state plan authorized by this article which shall be approved by the secretary of agriculture of the United States (hereinafter referred to as the "secretary of agriculture") for the State of Mississippi pursuant to the provisions of said Soil Conservation and Domestic Allotment Act.

SOURCES: Codes, 1942, § 4959; Laws, 1936, ch. 291.

Cross References — Authorization of Mississippi State University of Agriculture and Applied Science to engage in agricultural work, generally, see §§ 37-113-19 et seq.

Adoption of land use regulations, see § 69-27-37.

§ 69-27-103. Plan.

The university is hereby authorized, empowered and directed to formulate and submit to the Secretary of Agriculture, in conformity with the provisions of said Soil Conservation and Domestic Allotment Act, a state plan for each calendar year. It shall be the purpose of each such plan to promote such utilization of land and such farming practices as the university finds will tend, in conjunction with the operation of such other plans as may be approved for other states by the Secretary of Agriculture, to preserve and improve soil fertility, promote the economic use of land, diminish the exploitation and wasteful and unscientific use of natural soil resources, and reestablish and maintain the ratio between the purchasing power of the net income per person on farms and that of the income per person not on farms as defined in subsection (a) of Section 7 of said Soil Conservation and Domestic Allotment Act. Each such plan shall provide for adjustments in the utilization of land and in farming practices, through agreements with producers or through other voluntary methods, and for benefit payments in connection therewith, and also for such methods of administration not in conflict with any law of this state and such reports as the Secretary of Agriculture finds necessary for the effective administration of the plan and for ascertaining whether the plan is being carried out according to its terms.

SOURCES: Codes, 1942, § 4960; Laws, 1936, ch. 291.

Cross References — Authorization of Mississippi State University of Agriculture and Applied Science to engage in agricultural work, generally, see §§ 37-113-19 et seq.

Adoption of land use regulations, see § 69-27-37.

Federal Aspects — Subsection (a) of Section 7 of the Soil Conservation and Domestic Allotment Act is codified at 16 USCS § 590g.

§ 69-27-105. Federal grants.

Upon the acceptance by the Secretary of Agriculture of each such plan submitted pursuant to Section 69-27-103, the university is authorized and empowered to accept and receive all grants of money made pursuant to said Soil Conservation and Domestic Allotment Act for the purpose of enabling the state to carry out the provisions of such plan, and all such funds, together with any moneys which may be appropriated by the state for such purpose, shall be available to the university for expenditures necessary in carrying out the plan, including administrative expenses, expenditures in connection with educational programs in aid of the plan, and benefit payments.

SOURCES: Codes, 1942, § 4961; Laws, 1936, ch. 291.

§ 69-27-107. Powers of university.

In carrying out the provisions of each plan submitted pursuant to Section 69-27-103, and accepted by the Secretary of Agriculture, the university shall have power: to employ such agents or agencies, and to establish such agencies, as it may find to be necessary; to cooperate with local and state agencies and with agencies of other states and of the federal government; to conduct research and educational activities in connection with the formulation and operation of such plan; to enter into agreements with producers, and to provide by other voluntary methods, for adjustments in the utilization of land and in farming practices, and for payments in connection therewith in amounts which the university determines to be fair and reasonable.

SOURCES: Codes, 1942, § 4962; Laws, 1936, ch. 291.

§ 69-27-109. Agents.

For the purpose of carrying out each such plan submitted pursuant to Section 69-27-103, and accepted by the Secretary of Agriculture, according to its terms, the university, through its board of trustees, is hereby authorized to delegate any of the powers herein conferred to such agents or agencies as may be designated by the university and approved by the Secretary of Agriculture.

SOURCES: Codes, 1942, § 4963; Laws, 1936, ch. 291.

§ 69-27-111. Reports.

The university shall render for each year an annual report to the Governor, who shall transmit a copy thereof to each house of the Legislature, covering its administration of such plan, as referred to in this article, and all operations thereunder, including also the expenditure of funds, and each such report shall be printed as a public document promptly upon its transmittal to the Governor.

SOURCES: Codes, 1942, § 4964; Laws, 1936, ch. 291.

§ 69-27-113. No liability on university.

Nothing herein shall be construed or operate to impose any obligation or liability upon the university or other than as herein specified.

SOURCES: Codes, 1942, § 4965; Laws, 1936, ch. 291.

ARTICLE 5.

COUNTY AID IN CERTAIN COUNTIES.

SEC.
69-27-201. Designated counties authorized to aid soil erosion work.
69-27-203. Soil erosion committee.
69-27-205. Soil erosion committees; duties, etc.
69-27-207. Contracts between county and owner; benefit payments.
69-27-209. Machinery and equipment; how purchased; operation; election on question of purchase.
69-27-211. Machinery and equipment; contracts with owners must be first obtained; additional machinery.
69-27-213. Machinery and equipment; certificates of indebtedness for; tax levy; payment of expenses.
69-27-215. Notice of completion of contracts; special improvement tax; lien; lump sum payment, etc.
69-27-217. Tax collector's role; collection of assessment; sale of land for nonpayment; redemption.
69-27-219. No contracts on incumbered land.
69-27-221. Price of equipment.
69-27-223. Additional equipment not purchased until.

§ 69-27-201. Designated counties authorized to aid soil erosion work.

For the purpose of preventing soil erosion and its accompanying evils in Attala, Carroll, Claiborne, Clay, Copiah, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Holmes, Humphreys, Itawamba, Jackson, Kemper, Lamar, Leake, Lee, Madison, Monroe, Neshoba, Oktibbeha, Pearl River, Pike, Prentiss, Rankin, Scott, Stone, Tishomingo, Union, Warren and Webster Counties, Mississippi, so far as possible, said counties are hereby authorized to declare it to be the policy of the county to encourage and assist owners of land therein to properly terrace and ditch their agricultural lands, and cooperate with the federal government in soil erosion work.

SOURCES: Codes, 1942, § 4966; Laws, 1938, ch. 285.

§ 69-27-203. Soil erosion committee.

The director of the state extension service, the director of the state agricultural and forestry experiment station, and the state forester of the State of Mississippi shall, on written application of any five or more landowners of said county, owning an aggregate of not less than seventy-five hundred acres of land therein, appoint a soil erosion committee for said county, to consist of three members, each to be over twenty-five years of age and the record owner of not less than one hundred and sixty acres of land within the county. The term of each member of said committee shall be five years from the date of his appointment, but any member may be removed from office as other public officers and the term of any member of said committee shall cease, if he fails to maintain his ownership of the requisite one hundred and sixty acres of land in the county. Vacancies on said committee shall be filled for a term of five years by appointment in the same manner as the original members were appointed. The members of said committee shall receive no pay for the services to be performed hereunder, but one member of said committee shall be designated by it as secretary of the committee, who shall be paid his reasonable expense out of the soil erosion funds herein provided for, by order of the board of supervisors, upon certificate of the committee.

SOURCES: Codes, 1942, § 4967; Laws, 1938, ch. 285.

§ 69-27-205. Soil erosion committees; duties, etc.

It shall be the duty of said soil erosion committee to cooperate with the county agent in all matters pertaining to soil erosion work within the county, and with all agencies of the state or federal government engaged in the prevention of soil erosion; to assist the county agent, or any other agency, state or federal, in obtaining contracts from landowners for terracing and/or ditching of agricultural lands within the county; to recommend to the board of supervisors the purchase of proper machinery and supplies for ditching and terracing work, either or both; to approve in their discretion all contemplated purchases of such machinery by the board of supervisors, after bids have been received therefor and before contracts have been let by said board for the purchase thereof; to approve in their discretion all contracts or agreements made by the board of supervisors for the employment of labor to operate said machinery before the same shall become operative; to approve the rate which each landowner shall pay for the terracing and/or ditching of his land, to be included in the contract therefor, and to supervise the performance of all such contracts; to personally audit at least once each year the soil erosion fund or funds of the county; and to make recommendations to the board of supervisors pertaining to the administration of such fund, and the amount of taxes, if any, necessary to be levied to maintain the same. Nothing in this section contained shall apply to the purchase of machinery or the employment of labor except for soil erosion and ditching work hereunder.

SOURCES: Codes, 1942, § 4968; Laws, 1938, ch. 285.

§ 69-27-207. Contracts between county and owner; benefit payments.

All contracts entered into hereunder between a county designated in Section 69-27-201 and an owner of land therein for the terracing and/or ditching thereof shall be in such legal form as may be approved by the attorney for the board of supervisors, and each such contract, before becoming effective, shall contain a legal description of the land, shall be signed in his own behalf by the owner of the land, and if the property contained in such description be a part of the homestead of such owner, by the husband or wife, as the case may be, before at least two witnesses, and properly proved for recording, or acknowledged before some officer authorized to accept acknowledgments, shall be approved in writing by the secretary of the soil erosion committee, and shall be accepted by the board of supervisors, by order upon its minutes setting forth the date of the contract and the name of the landowner. Any number of such contracts may be accepted in one order, but no such contract shall be accepted unless all taxes theretofore becoming due and payable on the land therein described have been paid. Upon the acceptance of such contract or contracts, the clerk of the board of supervisors, acting in his official capacity as chancery clerk, shall note upon the lis pendens record the name of such landowner, together with a description of the land contained in such contract, which listing shall be notice to any subsequent purchaser or incumbrancer. Any subsequent transaction concerning such land shall be by reason of such listing and such notice subject to any and all assessments which may thereafter be made by virtue of such contract. All such contracts so accepted shall remain binding upon the signers thereof unless cancelled by an order of the board of supervisors, either of its own motion or by mutual agreement with the then owner of the land. The county shall not be liable for damages or otherwise because of its cancellation of any such contract, or its failure to perform the same; and the owner of the land shall not be required to make any payment under such contract unless and until the work to be done thereunder has been completed. The amount to be paid by the owner of the land for the work to be done under any such contract may at his option be paid in one payment on or before the 1st day of February following the completion thereof, or in not more than four equal annual payments, the first payment to be due on the first day of February following completion of the work, and one on the first day of February in each year thereafter until all are paid, with six per cent (6%) interest from the maturity date of the first payment; but such option shall be exercised in advance, and the terms of payment stated in the contract. All payments under such contracts shall be made to the tax collector of the county, for the benefit of a soil erosion fund or funds, to be collected, accounted for, paid in, and commissions charged thereon by the tax collector, as in case of other taxes collected for the county, except that sales of land for default in such payments shall be as herein provided.

SOURCES: Codes, 1942, § 4969; Laws, 1938, ch. 285.

§ 69-27-209. Machinery and equipment; how purchased; operation; election on question of purchase.

[With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

The board of supervisors of a county as designated in Section 69-27-201 may, on the recommendation of the soil erosion committee, or shall, if so required by the election hereinafter provided for, advertise for bids as in other cases and purchase the proper terracing and/or ditching machinery, either for the county as a whole or for any one or more supervisors districts thereof as a soil erosion district, and provide the necessary labor for the operation thereof, and the necessary supplies and maintenance to properly operate the same, subject, however, to the approval of the soil erosion committee herein otherwise provided. In event the board of supervisors shall fail or refuse to advertise for bids for the purchase of any machinery recommended by said soil erosion committee within sixty (60) days after receipt of such recommendation, it shall, on the filing with it of a petition signed by ten percent (10%) or more of the qualified electors of the county as a whole, or of one or more supervisors districts as the petition may provide, call and hold as in other cases a special election in said county, or in such one or more supervisors districts, within sixty (60) days after the filing of the petition, in which election the question shall be, for or against the purchase of terracing and/or ditching machinery for the county, or for one or more supervisors districts as the case may be; and if a majority of the votes cast in said election be in favor of the purchase of such machinery, then said board shall, at its next meeting, advertise for bids for the purchase thereof, and thereafter further perform the duties required of it hereunder with respect to soil erosion work. Such advertisement for bids shall constitute notice to the public of the intention of the board to make such purchase and the board may proceed accordingly unless on or before the first day of the meeting at which said bids are to be opened a petition, signed by twenty percent (20%) or more of the qualified electors of the county, exclusive of those who pay poll tax only, or if the soil erosion district is composed of one or more supervisors districts then of twenty percent (20%) or more of such soil erosion district, shall be filed with the clerk of the board protesting against such purchase, in which event such purchase shall not be made unless approved in an election called and held for the purpose in the manner provided for the calling and holding of elections on the question of the issuance of tax anticipation note or notes. Said board shall have full supervision of all soil erosion work, the machinery, labor, supplies, contracts, and the funds arising from work performed, from taxation, if any, or otherwise, except to the extent herein otherwise specifically provided; and in administering the soil erosion fund the board shall take into consideration the repairs and replacements incident to the operation of the character of machinery in use in order that the work may continue without undue interruption as long as may be necessary. In event machinery be purchased hereunder for soil erosion districts composed of one or more supervisors districts, but less than the whole county, then the soil erosion fund shall be administered in one or more subdivisions as may be necessary, so as to keep separate the operations of the several soil erosion districts of the county, and the taxes levied, if any, shall likewise be levied upon said separate soil erosion districts, in the same manner as for separate road districts; and for these purposes such separate soil erosion districts may be designated by name or number, to be declared by the board. All acts and proceedings of the board with respect to soil erosion work and the funds thereof shall be by order upon its minutes, as in other cases. Contracts for terracing and/or ditching shall be performed as nearly as possible in the order of their dates, any deviation therefrom by reason of necessity, public convenience, causes beyond the control of the committee, or agreement with the landowners, to be under the direction of the soil erosion committee. Only one (1) committee shall be appointed in said county, regardless of the number of soil erosion districts in operation therein.

[With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

The board of supervisors of a county as designated in Section 69-27-201 may, on the recommendation of the soil erosion committee, or shall, if so required by the election hereinafter provided for, advertise for bids as in other cases and purchase the proper terracing and/or ditching machinery for the county and provide the necessary labor for the operation thereof, and the necessary supplies and maintenance to properly operate the same, subject, however, to the approval of the soil erosion committee herein otherwise provided. In event the board of supervisors shall fail or refuse to advertise for bids for the purchase of any machinery recommended by said soil erosion committee within sixty (60) days after receipt of such recommendation, it shall, on the filing with it of a petition signed by ten percent (10%) or more of the qualified electors of the county, call and hold as in other cases a special election in said county within sixty (60) days after the filing of the petition, in which election the question shall be, for or against the purchase of terracing and/or ditching machinery for the county; and if a majority of the votes cast in said election be in favor of the purchase of such machinery, then said board shall, at its next meeting, advertise for bids for the purchase thereof, and thereafter further perform the duties required of it hereunder with respect to soil erosion work. Such advertisement for bids shall constitute notice to the public of the intention of the board to make such purchase and the board may proceed accordingly unless on or before the first day of the meeting at which said bids are to be opened a petition, signed by twenty percent (20%) or more of the qualified electors of the county, shall be filed with the clerk of the board protesting against such purchase, in which event such purchase shall not be made unless approved in an election called and held for the purpose in the manner provided for the calling and holding of elections on the question of the issuance of tax anticipation note or notes. Said board shall have full supervision of all soil erosion work, the machinery, labor, supplies, contracts, and the funds arising from work performed, from taxation, if any, or otherwise, except to the extent herein otherwise specifically provided; and in administering the soil erosion fund the board shall take into consideration the repairs and replacements incident to the operation of the character of machinery in use in order that the work may continue without undue interruption as long as may be necessary. All acts and proceedings of the board with respect to soil erosion work and the funds thereof shall be by order upon its minutes, as in other cases. Contracts for terracing and/or ditching shall be performed as nearly as possible in the order of their dates, any deviation therefrom by reason of necessity, public convenience, causes beyond the control of the committee, or agreement with the landowners, to be under the direction of the soil erosion committee. Only one (1) committee shall be appointed in said county.

SOURCES: Codes, 1942, § 4970; Laws, 1938, ch. 285; Laws, 1988 Ex Sess, ch. 14, § 58, eff from and after October 1, 1989.

§ 69-27-211. Machinery and equipment; contracts with owners must be first obtained; additional machinery.

The soil erosion committee shall not, except as herein otherwise provided, make recommendation to the board for the purchase of the first machinery for said county, or part of the county, unless it has contracts in the form herein required, signed by the landowners, duly witnessed, and approved by the secretary of the committee, covering at least seventy-five hundred acres of land, which, however, shall justify the purchase of as many as three outfits of machinery; and thereafter the subsequent contracts made in said county, or part of the county, shall be allocated to the first machinery purchased therefor, until the whole amount reaches a total of not less than four thousand acres to each outfit. Should the committee thereafter obtain or have additional like contracts in said county, or part of the county, covering another four thousand acres or more, the same shall warrant the purchase of additional machinery by recommendation or election as herein provided; and this shall furnish the guide for all further purchases in said county or part of the county. In exceptional cases, where the board finds as a fact that the amount of work to be done upon the land is much greater than in ordinary cases, the board of supervisors may, with the unanimous consent of the soil erosion committee, reduce the amount of contract acreage necessary for the purchase of one outfit of machinery to not less than two thousand acres, and the amount of contract acreage to be allocated to one outfit of machinery to not less than three thousand acres, and the committee may then recommend purchases of machinery when those conditions are complied with, provided that not less than two outfits are owned or to be purchased by said county or part of the county under this article.

SOURCES: Codes, 1942, § 4971; Laws, 1938, ch. 285.

§ 69-27-213. Machinery and equipment; certificates of indebtedness for; tax levy; payment of expenses.

The board of supervisors shall have the right to issue certificates of indebtedness of the county for the purchase price of the necessary machinery for soil erosion work hereunder, or any part of such price, to be paid from the soil erosion fund of the county or part of the county for which such machinery is purchased, which certificates shall be payable in no more than three annual instalments, the first of which in the case of two instalments to be not less than one-half of the aggregate certificates issued for that purchase, and the first two of which in the case of three instalments to be for not less than one-third each of such aggregate, the first instalment in any case to be payable on the first Monday in April of the year following that in which the certificates are issued, and subsequent instalment on the first Monday in April each succeeding year. By its order purchasing such machinery the board may provide for the payment of interest at a rate of not more than six per cent (6%) per annum upon the deferred payments evidenced by said certificates, in which event said certificates shall show upon their face that fact, and shall be payable with interest accordingly; and said certificates shall also show upon their face the date when and the purpose for which issued, the principal amount of the certificate, the aggregate amount of the certificates issued for that particular purchase, the date when payable, and whether payable from the soil erosion fund of the whole county or of some named or numbered soil erosion district thereof; and all such certificates shall be signed by the president of the board, shall be countersigned by the clerk thereof, shall have the seal of the county impressed thereon, and shall be registered by the clerk when issued as is required in the case of bonds, and may be validated as such. The board shall also make appropriate provision, by budget and tax levy as in other cases, to so govern and supplement the soil erosion fund arising from performance of contracts for landowners, as to make prompt payments of all bills for labor, fuel, oil, supplies, repairs and other necessary cost and expenses incident to the operation of said machinery, the performance of said contracts, and the carrying out of the provisions hereof, and prompt payment of the certificates of indebtedness issued for the purchase of machinery, with interest, if any, as and when due. The board may also borrow money for the county in anticipation of taxes and the special assessments herein provided for, for the payment of current operating expenses of soil erosion work, as in case of other current operating expenses, the same to be paid out of the soil erosion fund, supplemented if necessary by a special tax as in other cases. Money so borrowed, as well as the certificates of indebtedness issued for the purchase of machinery, shall be a liability of the county until paid. The certificates herein provided for shall not be taken into consideration under any debt limitation statute.

SOURCES: Codes, 1942, § 4972; Laws, 1938, ch. 285.

§ 69-27-215. Notice of completion of contracts; special improvement tax; lien; lump sum payment, etc.

It shall be the duty of the soil erosion committee to notify the board of supervisors, the county assessor and the landowner within fifteen days after the performance of each contract by the county or separate soil erosion district, giving the assessor the name of the landowner, the legal description of the land, the amount to be paid to the county or district, and how payable, and to the landowner a notice that a special assessment will be made against his land by the assessor for the amount determined by the committee, and presented to the next meeting of the board of supervisors beginning more than ten days thereafter for approval. The assessor shall, at the next meeting of the board beginning more than ten days after such notice, file with the board of supervisors, in duplicate, on appropriate forms, keeping a copy thereof on file in his own office, an assessment of the land for a special improvement tax thereon equal to the amount fixed by the committee, and payable as provided by the contract. It shall be the duty of the board of supervisors at said meeting to hear any objections to such assessment, by the landowner or the holder of any lien thereon, and to determine the amount of the assessment, not to exceed the amount fixed by the committee, and to approve the assessment as finally determined. The clerk of the board shall forthwith certify such assessment to the tax collector of the county upon the duplicate of the assessment filed by the assessor. In event such assessment be not returned to or acted upon by the board at the first meeting for any reason, it may be returned, considered and acted upon at any subsequent meeting. When approved, such assessment shall be a lien upon the land subordinate only to the lien of other taxes, prior and subsequent, and no delay or irregularity in the giving of notices, the making of the assessment, the hearing and approval thereof, or the certification thereof to the tax collector, shall affect the validity of the assessment if the work was actually done upon the land and the amount of the assessment does not exceed the contract price. Appeals may be taken to the circuit court of the county as in other cases of assessments for taxation, by the landowner or the holder of any lien upon the land. Nothing herein contained shall prevent any landowner from making payment to the tax collector of the estimated amount to become due under his contract, or any part thereof, in advance of the time the same becomes due, and the tax collector shall receive any payment so tendered, and give the landowner credit therefor against the assessment when made.

SOURCES: Codes, 1942, § 4973; Laws, 1938, ch. 285.

§ 69-27-217. Tax collector's role; collection of assessment; sale of land for non-payment; redemption.

It shall be the duty of the tax collector to preserve all assessments so certified to him, to note upon the real property assessment roll of the county or county district upon which ad valorem taxes are to be collected for the year in which said work was done, the fact that said land is subject to a special soil erosion fund tax, and to collect with the other taxes payable on February first, giving a separate receipt therefor, the amount of the special soil erosion fund tax then due accordingly, and to so continue from year to year until such a special tax has been paid in full. If said special tax was to be paid in one payment within one year after completion of the work, the assessment shall be made accordingly, and the tax shall be then payable, and shall be collected at the time shown by the assessment. In event said tax or any part thereof is not paid when due, the tax collector shall advertise and sell the land liable therefor as in the case of lands sold for the non-payment of drainage district taxes, and all provisions of law applicable to such drainage district tax sales shall be applied in the case of soil erosion fund tax sales, except that if there are no other bidders the soil erosion committee shall become the purchaser on behalf of and in the name of the county, a sale or sales may be made on the first Monday of any month, and such sales shall be subordinate to all other sales of taxes, prior or subsequent, to the same extent as sales for other special improvements. For the protection of its rights hereunder, any of said counties may redeem from sale of any such lands to the state after any tax sale thereof by payment to the state of the state taxes with damages thereon and costs of sale.

SOURCES: Codes, 1942, § 4974; Laws, 1938, ch. 285.

§ 69-27-219. No contracts on incumbered land.

No contract shall be approved by the soil erosion committee of any of said counties designated in Section 69-27-201, concerning any lands whereon there is any lien of any character whatever, except lien for current taxes, unless the holder of such lien shall have first approved such contract, and such approval shall operate as a waiver of such lien in favor of and in subordination to any subsequent special assessment made in accordance herewith.

SOURCES: Codes, 1942, § 4975; Laws, 1938, ch. 285.

§ 69-27-221. Price of equipment.

No bids for furnishing equipment under the provisions of this article may be considered or accepted by any county, unless said bid is the factory list price plus a reasonable delivery charge.

SOURCES: Codes, 1942, § 4976; Laws, 1938, ch. 285.

§ 69-27-223. Additional equipment not purchased until.

In the event of a tax levy being made to pay the purchase price of any equipment purchased under this article, the county shall not be authorized to purchase any additional equipment until enough money has been collected from the use of equipment already purchased, sufficient to pay back into the county treasury the full amount collected by such tax levy.

SOURCES: Codes, 1942, § 4977; Laws, 1938, ch. 285.

ARTICLE 7.

SOIL AND WATER CONSERVATION COST-SHARE PROGRAM.

SEC.	
69-27-301.	Definitions.
69-27-303.	Administration of program.
69-27-305.	Authority to employ personnel and procure supplies.
69-27-307.	Rulemaking powers.
69-27-308.	Participation in water quality cost-share project.
69-27-309.	Use of funds appropriated for commission.
69-27-311.	Implementation of program; recovery of improperly used grants.
69-27-313.	Application for assistance; consideration by commission.
69-27-315.	Application to state-owned lands.

§ 69-27-301. Definitions.

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Commission" shall mean the Mississippi Soil and Water Conservation Commission.

(b) "District" or "soil and water conservation district" means a governmental subdivision of the state and a public body , corporate and politic, organized in accordance with the provisions of Section 69-27-1, Mississippi Code of 1972, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(c) "State" means the State of Mississippi.

(d) "Agency of this state" includes the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state.

(e) "United States" or "agencies of the United States" includes the United States of America, the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(f) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(g) "Landowner" or "owner of land" includes any person, firm, or corporation who shall hold legal or equitable title to any lands lying within a soil and water conservation district.

(h) "Land operator" or "operator of land" includes any person, firm or corporation, other than the owner, who shall be in possession of any lands lying within a soil and water conservation district whether as lessee, renter, tenant or otherwise.

(i) "Eligible lands" shall mean lands owned or leased by a private individual, group or association, and lands owned by the State of Mississippi or any political subdivision thereof.

(j) "Cost-share assistance" shall mean partial financial assistance in such amounts as the commission, in its discretion, shall determine, subject to the limitations as set by the State Soil and Water Conservation Commission.

(k) "Approved practice" means those farming practices or operations that are carried out in a manner that will directly benefit the conservation, development or proper utility of soil and water resources.

SOURCES: Laws, 1985, ch. 375, § 1, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 23.

CJS. 3 C.J.S. Agriculture § 72.

§ 69-27-303. Administration of program.

The commission shall serve as the administrator of the provisions of this act and shall serve as the disbursing agency for funds to be expended from and deposited to the credit of the Soil and Water Cost-Share Program.

SOURCES: Laws, 1985, ch. 375, § 2, eff from and after July 1, 1985.

§ 69-27-305. Authority to employ personnel and procure supplies.

The commission and districts are authorized to employ such professional and clerical assistance and obtain such supplies and equipment as needed to implement this program.

SOURCES: Laws, 1985, ch. 375, § 3, eff from and after July 1, 1985.

§ 69-27-307. Rulemaking powers.

The commission shall adopt and promulgate such rules and regulations as necessary for the implementation of the Mississippi Soil and Water Cost-Share Program. The commission is authorized to conduct public hearings or otherwise seek the advice, counsel and recommendations of interested owners, associations, industrialists or other persons or groups. Adequate notice of any public hearing must be provided within the general area of the site of the hearing. The commission shall publish such rules and regulations and shall make the same available upon request.

SOURCES: Laws, 1985, ch. 375, § 4, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 23.

CJS. 3 C.J.S. Agriculture § 72.

§ 69-27-308. Participation in water quality cost-share project.

For a district commissioner to participate in any water quality cost-share project funded directly or indirectly by the United States Environmental Protection Agency, the district board of which the commissioner is a member shall not participate in the proposal, development, planning, advisory or implementation phases of the project. The Mississippi Soil and Water Conservation Commission shall make all decisions without the involvement of the district board.

SOURCES: Laws, 1996, ch 378, § 1, eff from and after passage (approved March 18, 1996).

§ 69-27-309. Use of funds appropriated for commission.

The commission is authorized to use money appropriated therefor to assist in implementing approved practices on a cost-sharing basis on eligible lands in the State of Mississippi.

SOURCES: Laws, 1985, ch. 375, § 5, eff from and after July 1, 1985.

§ 69-27-311. Implementation of program; recovery of improperly used grants.

The commission shall have the following powers and duties to implement the provisions of the Mississippi Soil and Water Cost-Share Program:

(a) To determine which approved practices shall be eligible for cost-share assistance;

(b) To establish maximum sums and cost-share rates which any one eligible landowner or land operator may receive for implementation of an approved practice;

(c) To review periodically the costs of establishing conservation practices and to make such adjustment as, in the discretion of the commission, is necessary.

Upon request of the commission, the Attorney General of the State of Mississippi shall institute proper legal proceedings to recover any or all of the cost-share assistance provided an eligible landowner or land operator if the commission shall determine that the landowner or land operator failed to implement any portion of or all of the practice approved by the commission for such landowner or land operator, and if the commission determines that legal proceedings are necessary and proper.

SOURCES: Laws, 1985, ch. 375, § 6, eff from and after July 1, 1985.

RESEARCH REFERENCES

ALR. Constitutionality of reforestation or forest conservation legislation. 13 A.L.R.2d 1095.

Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Conservation: validity, construction, and application of enactments restricting land development by dredging or filling. 46 A.L.R.3d 1422.

Validity, construction, and application of statutes requiring assessment of environmental information prior to grants of entitlements for private land use. 76 A.L.R.3d 388.

State and local regulation of private landowner's disposal of solid waste on own property. 37 A.L.R.4th 635.

Am Jur. 3 Am. Jur. 2d, Agriculture § 23.

CJS. 3 C.J.S. Agriculture § 72.

§ 69-27-313. Application for assistance; consideration by commission.

Any eligible landowner or land operator who wishes to receive cost-share assistance shall file an application with the soil and water conservation district stating the practice to be implemented. Upon the receipt of an application, the district shall:

(a) Make a need and feasibility determination;

(b) Inform the landowner or land operator of the result of the needs and feasibility study and inform the landowner or land operator as to what practice is approved for installation.

SOURCES: Laws, 1985, ch. 375, § 7, eff from and after July 1, 1985.

RESEARCH REFERENCES

ALR. Constitutionality of reforestation or forest conservation legislation. 13 A.L.R.2d 1095.

Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Conservation: validity, construction, and application of enactments restricting land development by dredging or filling. 46 A.L.R.3d 1422.

Validity, construction, and application of statutes requiring assessment of environmental information prior to grants of entitlements for private land use. 76 A.L.R.3d 388.

State and local regulation of private landowner's disposal of solid waste on own property. 37 A.L.R.4th 635.

Am Jur. 3 Am. Jur. 2d, Agriculture § 22.

CJS. 3 C.J.S. Agriculture § 57.

§ 69-27-315. Application to state-owned lands.

Any agency, department, board, commission or other subdivision of government of the State of Mississippi, or any political subdivision thereof, is authorized to implement an approved practice on any lands owned by such political entity or owned by the State of Mississippi and supervised or managed by such entity. The governing authorities of such entity shall engage the assistance of the county conservation district of the county in which the land is located in the preparation of an application for submission to the district. The district shall treat any such political entity as an individual owner for purposes of considering applications, granting cost-share assistance and approving the practice implemented.

SOURCES: Laws, 1985, ch. 375, § 8, eff from and after July 1, 1985.

ARTICLE 9.

ACQUISITION OF HEAVY OR SPECIALIZED MACHINERY OR EQUIPMENT NECESSARY FOR INSTALLATION OF SOIL AND WATER CONSERVATION MEASURES.

SEC.

69-27-331. Conservation commission authorized to acquire and make available machinery and equipment; amortization of costs; rental fees.
69-27-333. Commission to retain title to machinery and equipment.
69-27-335. Record keeping requirements; inventory of equipment.
69-27-337. Payment of amortized rental fees; collection of delinquent payments; deposit of funds.
69-27-339. Conservation districts authorized to obtain machinery or equipment in combination.
69-27-341. Commission authorized to promulgate rules and regulations.
69-27-343. Revolving fund.
69-27-345. Authority to issue bonds to fund revolving fund.
69-27-347. State's full faith and credit pledged; repayment of bonds.
69-27-349. Terms of bonds; sale of bonds; expenses of issuance.
69-27-351. Interest on bonds; maturity of bonds.
69-27-353. Notice of sale of bonds.
69-27-355. Execution of bonds; signatures on bonds.
69-27-357. Deposit of proceeds of bonds; disbursements.
69-27-359. Attorney General to represent Bond Commission in issuing bonds; payment of costs.
69-27-361. Bonds as legal investments.
69-27-363. Bonds and income exempt from certain taxes.
69-27-365. Sections 69-27-345 through 69-27-363 as complete authority for issuance of bonds.
69-27-367. Severability provision.
69-27-369. Sale of equipment by Commission; retention and use of funds solely for purchase of equipment.

§ 69-27-331. Conservation commission authorized to acquire and make available machinery and equipment; amortization of costs; rental fees.

(1)(a) The State Soil and Water Conservation Commission, subject to the restrictions provided in Sections 69-27-331 through 69-27-341, is authorized to acquire and to make available, or to assist in acquiring or making available to soil and water conservation districts, heavy or specialized machinery or equipment deemed necessary for installation and implementation of soil and water conservation practices or measures.

(b) The heavy or specialized machinery or equipment purchased under this section may be either new or used. The commission may purchase used equipment through a duly licensed and authorized public auction of agricultural, heavy or specialized equipment as authorized under Section 31-7-13.

(2) When the commission acquires or makes available to any district the machinery or equipment referred to in subsection (1) of this section, it shall require the district to fully amortize to the commission any amount so expended by the commission for such assistance. The amount and method of amortization for each piece of heavy or specialized machinery or equipment shall be determined by the commission in conjunction with the soil and water conservation district. In making this determination, the following shall be considered: (a) full amortization to the commission of the capital outlay for the machinery or equipment over the period of its reasonably anticipated full usefulness; and, when necessary (b) (i) cover the cost of operation, maintenance and repairs; (ii) pay the usual cost of providing an operator; (iii) compensate the district for the usual costs of transportation from one (1) job to another.

(3) In giving effect to all of the foregoing, the commission shall estimate the amount of time such machinery or equipment would ordinarily be idle.

SOURCES: Laws, 1990, ch. 499, § 1; Laws, 1991, ch. 341, § 1; Laws, 2001, ch. 333, § 1, eff from and after passage (approved Mar. 5, 2001.)

Cross References — Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction, see § 31-7-13.

State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Record keeping requirements with respect to use of machinery and equipment referred to in this section, see § 69-27-335.

Authority for districts to combine to obtain machinery and equipment referred to in this section, see § 69-27-339.

Authority of commission to promulgate rules and regulations to effectuate the purposes of this section, see § 69-27-341.

Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-333. Commission to retain title to machinery and equipment.

The Soil and Water Conservation Commission shall retain title to each piece of heavy or specialized machinery or equipment so purchased and made available to any soil and water conservation district until such time as the district fully amortizes the commission's investment in such machinery or equipment. After the commission's investment in such machinery or equipment has been fully amortized, it is authorized and empowered to transfer the title thereto to the district.

SOURCES: Laws, 1990, ch. 499, § 2, eff from and after July 1, 1990.

Cross References — State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Authority of commission to promulgate rules and regulations to effectuate the purposes of this section, see § 69-27-341.

Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-335. Record keeping requirements; inventory of equipment.

Each soil and water conservation district which receives or uses the machinery or equipment referred to in Section 69-27-331 shall maintain its public records to show for each piece of machinery or equipment: (a) the amounts collected from each job in each district; (b) the expense of repairing, moving, manning and other usual cost of operation; and (c) the amount paid by each district for the purpose of amortizing the commission's investment in such machinery or equipment. Each of such districts shall send a duplicate copy of those records to the commission, which shall retain such copies in its files for public inspection. In addition thereto, the commission shall at all times maintain an account showing each piece of machinery or equipment the title to which is vested in it, the amount paid thereon by any soil and water conservation district, and the amount remaining to be amortized; and the commission shall also maintain a current inventory of all such equipment, shall have such equipment marked and identified as being the property of the commission, and shall promulgate rules and regulations which shall ensure that the use of such equipment within each district is on an equitable basis.

SOURCES: Laws, 1990, ch. 499, § 3, eff from and after July 1, 1990.

Cross References — Authority of commission to promulgate rules and regulations to effectuate the purposes of this section, see § 69-27-341.

Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-337. Payment of amortized rental fees; collection of delinquent payments; deposit of funds.

The amount paid by any such district to the commission for amortization purposes shall be made semiannually. When payments are not received by the commission within sixty (60) days of the due date the commission shall take all necessary actions to collect such delinquent payments. Amounts received or collected hereunder shall be credited to the revolving fund created in Section 69-27-343.

SOURCES: Laws, 1990, ch. 499, § 4, eff from and after July 1, 1990.

Cross References — Authority of commission to promulgate rules and regulations to effectuate the purposes of this section, see § 69-27-341.

Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-339. Conservation districts authorized to obtain machinery or equipment in combination.

Any two (2) or more soil and water conservation districts may combine with each other for the purpose of obtaining and using the machinery or equipment referred to in Section 69-27-331, on the terms and conditions set forth in Sections 69-27-331 through 69-27-341.

SOURCES: Laws, 1990, ch. 499, § 5, eff from and after July 1, 1990.

Cross References — Authority of commission to promulgate rules and regulations to effectuate the purposes of this section, see § 69-27-341.

Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-341. Commission authorized to promulgate rules and regulations.

The commission is authorized to promulgate such rules and regulations or methods of accounting as may be necessary or expedient to give effect to the purposes expressed in Sections 69-27-331 through 69-27-341.

SOURCES: Laws, 1990, ch. 499, § 6, eff from and after July 1, 1990.

Cross References — Cost of machinery and equipment acquired by commission under this section to be paid from revolving fund, see § 69-27-343.

§ 69-27-343. Revolving fund.

There is created in the State Treasury a revolving fund which shall be comprised of any monies appropriated thereto by the Legislature, the proceeds from any bonds issued under Sections 69-27-345 through 69-27-365, and payments made by districts to the commission for amortization purposes. The costs of all machinery and equipment acquired by the commission for soil and water conservation districts under Sections 69-27-331 through 69-27-341 shall be paid from the revolving fund. The monies in the revolving fund shall not be used for any purpose other than to make available to soil and water conservation districts the machinery and equipment of the type referred to in Section 69-27-331 or to make principal and interest payments on the bond issue as required by Section 69-27-347. The monies in the revolving fund shall not lapse to the General Fund at the end of the fiscal year.

SOURCES: Laws, 1990, ch. 499, § 7, eff from and after July 1, 1990.

Cross References — Deposit of amortized rental fees for use of machinery or equipment into fund created in this section, see § 69-27-337.

Sale of bonds to provide funds for revolving fund established in this section, see § 69-27-345.

Bond payments to be made from fund established in this section, see § 69-27-347.

Proceeds from sale of bonds to be deposited in fund established in this section, see § 69-27-357.

§ 69-27-345. Authority to issue bonds to fund revolving fund.

The State Soil and Water Conservation Commission is authorized, at one time or from time to time, to declare by resolution the necessity for issuance of negotiable general obligation bonds of the State of Mississippi to provide funds for the revolving fund established in Section 69-27-343. Upon the adoption of a resolution by the commission, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by Sections 69-27-345 through 69-27-365, the commission shall deliver a certified copy of its resolution or resolutions to the State Bond Commission. Upon receipt of same, the State Bond Commission, in its discretion, shall act as the issuing agent, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The amount of bonds issued under Sections 69-27-345 through 69-27-365 shall not exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate.

SOURCES: Laws, 1990, ch. 499, § 8; Laws, 2005, ch. 521, § 4, eff from and after passage (approved Apr. 20, 2005.)

Cross References — State Bond Commission, see § 31-17-1 et seq.

State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-347. State's full faith and credit pledged; repayment of bonds.

For the payment of such bonds and the interest thereon, the full faith, credit, and taxing power of the State of Mississippi are hereby irrevocably pledged. If the Legislature finds that there are sufficient funds available in the General Fund of the State Treasury to pay maturing principal and accruing interest of the bonds, and if the Legislature appropriates such available funds for the purpose of paying such maturing principal and accruing interest, then the maturing principal and accruing interest of the bonds shall be paid from appropriations made by the Legislature from the General Fund of the State Treasury.

All monies in such revolving fund which are not necessary to pay accruing bonds and interest shall be invested by the State Treasurer in such securities as are provided by law for the investment of funds of the state, and the earnings on such investments shall be transferred by the Treasurer into the revolving fund created in Section 69-27-343.

SOURCES: Laws, 1990, ch. 499, § 9; Laws, 2005, ch. 521, § 5, eff from and after passage (approved Apr. 20, 2005.)

Cross References — State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-349. Terms of bonds; sale of bonds; expenses of issuance.

Such bonds may be executed and delivered by the state at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in fully registered form or in bearer form registrable either as to principal or interest or both, may bear such conversion privileges and be payable in such installments and at such time or times not exceeding twenty (20) years from the date thereof, may be payable at such place or places, whether within or without the State of Mississippi, may bear interest payable at such time or times and at such place or places and evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the State Bond Commission under which the bonds are authorized to be issued. Such bonds shall not bear a greater overall maximum interest rate to maturity than that authorized by law for general obligation bonds. If deemed advisable by the State Bond Commission, there may be retained in the proceedings under which any such bonds are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and briefly recited or referred to on the face of the bonds, but nothing herein contained shall be construed to confer on the state any right or option to redeem any bonds, except as may be provided in the proceedings under which they shall be issued. Any such bonds shall be sold on sealed bids at public sale, and for such price as the State Bond Commission determines to be in the best interest of the State of Mississippi, but no such sale shall be made at a price less than par value plus accrued interest to date of delivery of the bonds to the purchaser. The state may pay all expenses, premiums and commissions which the State Bond Commission may deem necessary or advantageous in connection with the issuance thereof, but solely from the proceeds of the bonds. The issuance by the state of one or more series of bonds shall not preclude it from issuing other series of bonds, but the proceedings under which any subsequent bonds may be issued shall recognize and protect any prior pledge made for any prior issuance of bonds.

SOURCES: Laws, 1990, ch. 499, § 10, eff from and after July 1, 1990.

Cross References — State Bond Commission, see § 31-17-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-351. Interest on bonds; maturity of bonds.

No bond issued under Sections 69-27-345 through 69-27-365 shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified on the bonds; and all bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on bonds shall be payable semiannually or annually, except the first interest coupon attached to any bond may be for any period not exceeding one (1) year. If bonds are issued in coupon form, no interest payment shall be evidenced by more than one (1) coupon, and neither cancelled nor supplemental coupons shall be permitted. If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds.

SOURCES: Laws, 1990, ch. 499, § 11, eff from and after July 1, 1990; Laws, 1993, ch. 472, § 5, eff from and after passage (approved March 27, 1993).

Cross References — Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-353. Notice of sale of bonds.

Notice of the sale of any such bonds shall be published at least two (2) times, the first of which shall be made not less than ten (10) days prior to the date of sale, and shall be so published in one or more newspapers having a general circulation in the City of Jackson and in one or more other newspapers or financial journals with a large national circulation, to be selected by the State Bond Commission.

SOURCES: Laws, 1990, ch. 499, § 12, eff from and after July 1, 1990.

Cross References — State Bond Commission, see § 31-17-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-355. Execution of bonds; signatures on bonds.

All bonds shall be executed on behalf of the state by the manual or facsimile signature of the Chairman of the State Bond Commission and shall be countersigned by the manual or facsimile signature of the Secretary of the State Bond Commission. All coupons shall be executed on behalf of the state by the facsimile signatures of the Chairman and Secretary of the State Bond Commission. If the officers whose signatures or countersignatures appear on the bonds or interest coupons shall cease to be such officers before delivery of the bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery, or had been in office on the date such bonds may bear.

SOURCES: Laws, 1990, ch. 499, § 13, eff from and after July 1, 1990.

Cross References — State Bond Commission, see § 31-17-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-357. Deposit of proceeds of bonds; disbursements.

Upon the issuance and sale of such bonds, the State Bond Commission shall transfer the proceeds of any such sale or sales to the revolving fund created in Section 69-27-343. The proceeds of such bonds shall be disbursed solely upon the order of the Soil and Water Conservation Commission under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds.

SOURCES: Laws, 1990, ch. 499, § 14, eff from and after July 1, 1990.

Cross References — State Bond Commission, see § 31-17-1 et seq.

State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-359. Attorney General to represent Bond Commission in issuing bonds; payment of costs.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the Soil and Water Conservation Commission in issuing, selling and validating bonds authorized under Sections 69-27-345 through 69-27-365, and the commission is authorized to pay from the proceeds derived from the sale of such bonds or from other funds available to the commission, the reasonable cost of approving attorney's fees, validating, printing, cost of delivery of such bonds and any other necessary costs of issuance.

SOURCES: Laws, 1990, ch. 499, § 15; Laws, 2012, ch. 546, § 31, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added the exception at the beginning.

Cross References — State Soil and Water Conservation Commission, see § 69-27-1 et seq.

Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-361. Bonds as legal investments.

Bonds issued under Sections 69-27-345 through 69-27-365 shall be legal investments for commercial banks, trust companies, savings and loan associations and insurance companies organized under the laws of this state.

SOURCES: Laws, 1990, ch. 499, § 16, eff from and after July 1, 1990.

Cross References — Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-363. Bonds and income exempt from certain taxes.

All bonds issued under Sections 69-27-345 through 69-27-365 and the income therefrom shall be exempt from all taxation except gift, transfer and inheritance taxes.

SOURCES: Laws, 1990, ch. 499, § 17, eff from and after July 1, 1990.

Cross References — Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Sections 69-27-345 through 69-27-363 as complete authority to issue bonds authorized by this section, see § 69-27-365.

§ 69-27-365. Sections 69-27-345 through 69-27-363 as complete authority for issuance of bonds.

Sections 69-27-345 through 69-27-363, without reference to any statute not referred to herein, shall be deemed to be full and complete authority for the issuance of such bonds, and shall be construed as an additional and alternative method therefor, and none of the present restrictions, requirements, conditions or limitations of law applicable to the issuance or sale of bonds, notes or other obligations by the state shall apply to the issuance and sale of bonds under Sections 69-27-345 through 69-27-363, and no proceedings shall be required for the issuance of such bonds other than those provided for and required herein, and all powers necessary to be exercised in order to carry out the provisions of Sections 69-27-345 through 69-27-363 are hereby conferred.

SOURCES: Laws, 1990, ch. 499, § 18, eff from and after July 1, 1990.

Cross References — Revolving fund for deposit of proceeds of bonds authorized by this section, see § 69-27-343.

Resolution by commission declaring necessity of bonds authorized by this section and maximum amount of such bonds, see § 69-27-345.

Interest rates for bonds issued under this section, see § 69-27-351.

Attorney General to represent commission in issuing, selling and validating bonds authorized under this section, see § 69-27-359.

Bonds issued under this section as legal investments, see § 69-27-361.

Bonds issued under this section, and income therefrom, as tax exempt, see § 69-27-363.

§ 69-27-367. Severability provision.

If for any reason any section, paragraph, provision, clause or part of Sections 69-27-345 through 69-27-365 shall be held unconstitutional or invalid, that section shall not affect or invalidate any other section, paragraph, provision, clause or part of sections 69-27-331 through 69-27-367 not in and of itself invalid, but the remaining portions thereof shall be in force without regard to that so invalidated.

SOURCES: Laws, 1990, ch. 499, § 19, eff from and after July 1, 1990.

§ 69-27-369. Sale of equipment by Commission; retention and use of funds solely for purchase of equipment.

(1) The Soil and Water Conservation Commission is hereby authorized to retain all funds generated from the sale of equipment. Any funds made available from the sale of equipment shall be deposited into the special fund in the State Treasury to the credit of the Soil and Water Conservation Commission and shall be used solely for the purpose of purchasing equipment.

(2) Sales of equipment may be made by the Soil and Water Conservation Commission by any lawful method, including public auction. The Department of Audit shall adopt rules and regulations governing any sale conducted by public auction.

SOURCES: Laws, 1993, ch. 384, § 1, eff from and after July 1, 1993.

ARTICLE 11.

NATURAL RESOURCES CONSERVATION EDUCATION FUND.

SEC.
69-27-401. Creation of fund; purpose and use of monies in fund.

§ 69-27-401. Creation of fund; purpose and use of monies in fund.

There is created in the State Treasury a special fund to be designated as the "Natural Resources Conservation Education Fund." The fund shall consist of such monies as are required to be deposited therein under Section 27-19-56.19; any gifts, grants or other contributions from any federal, state or local government or any person, firm or corporation; and such other monies as the Legislature may appropriate or authorize to be deposited into the fund. Monies in the fund may be used upon appropriation by the Legislature, by the Mississippi Soil and Water Conservation Commission to develop, produce and distribute materials used to educate individuals, groups or both, as to the natural resources of the State of Mississippi and the conservation of such resources.

SOURCES: Laws, 2000, ch. 536, § 9, eff from and after July 1, 2000.

CHAPTER 28

Protection and Conservation of Agricultural Lands

SEC.
69-28-1. Legislative purpose and intent.
69-28-3. Definitions.
69-28-5. Qualifications for designation as agricultural district.
69-28-7. Petition for designation or redesignation of an agricultural district.
69-28-9. Procedures, limitations and responsibilities of agricultural districts.
69-28-11. Soil and water conservation district.

§ 69-28-1. Legislative purpose and intent.

It is the intent and purpose of the Legislature to encourage the conservation, protection and responsible utilization of lands that are managed for purposes of agricultural production. It is recognized that such lands are finite, fragile and valuable resources that contribute economically and socially to the well-being of the State of Mississippi. It is also recognized that these lands are subject to change and conversion from agricultural production as a result of urban expansion, transportation projects, water impoundments, utility expansion and similar land development measures. It is the policy of the Legislature to provide a process for the recognition of lands dedicated to agricultural production and to assure an accurate understanding of the impacts of public policy decisions that might otherwise alter the capability of those lands to remain in agricultural production.

SOURCES: Laws, 1997, ch. 469, § 1, eff from and after July 1, 1997.

§ 69-28-3. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

(a) "Agricultural production" means those operations including associated land and facility management activities engaged in the commercial propagation, raising, harvesting and/or processing of any plant or animal or products thereof for the purposes of consumption, utilization, goods or services either on-site or for distribution.

(b) "Farmland" means land and associated facilities involved in agricultural production activities.

(c) "Agricultural district" means those properties residing within a contiguous boundary and meeting appropriate criteria for designation as such by the local soil and water conservation district.

(d) "Soil and water conservation district" means that governmental body established by Section 69-27-15 et seq.

(e) "State Soil and Water Conservation Commission" means that governmental body established by Section 69-27-2 et seq.

(f) "District commissioners" means the governing body of the local soil and water conservation district.

(g) "Ownership" means any individual, family, company, corporation or organization holding title to property within a proposed or established agricultural district.

(h) "Petition" means the application and the application process for designation of an agricultural district as submitted to the local soil and water conservation district.

SOURCES: Laws, 1997, ch. 469, § 2, eff from and after July 1, 1997.

§ 69-28-5. Qualifications for designation as agricultural district.

(a) To qualify for designation as an agricultural district, a district shall initially contain at least fifty (50) contiguous acres and may include any number of individual property ownerships; however, no single ownership shall contain less than fifteen (15) acres.

(b) Agricultural districts shall include only ownerships engaged in agricultural production.

(c) Before designation of an agricultural district, landowners must submit a petition to the local soil and water conservation district commissioners requesting designation of an agricultural district. The petition shall include the following information:

(i) A general description of the proposed agricultural district including total number of ownerships, total acreage, land use information, social and economic information about the respective area of the county and potential impacts on development of agricultural production;

(ii) Location of the proposed agricultural district boundary on a standard United States Geological Survey Quadrangle map (1:2000 scale);

(iii) Location of the proposed agricultural district boundary on the local county tax assessor map including location and identification of each ownership within the agricultural district as well as identification of all ownerships adjacent to the agricultural district;

(iv) A description of the type and extent of agricultural production activity for each ownership within the proposed agricultural district;

(v) Other pertinent information as the local soil and water conservation district commissioners may require to evaluate the petition.

(d) Individual ownership participation in an agricultural district is entirely voluntary, and no land shall be included in the agricultural district without the consent of the owner.

(e) Upon receipt of a petition the local soil and water conservation district commissioners shall notify the county board of supervisors and/or any local or regional planning or zoning body that may apply by sending a copy of the petition to such body.

(f) In evaluating a petition for the establishment of an agricultural district the local soil and water conservation district commissioners shall consider the following:

(i) The capability of the land to support continued agricultural production as indicated by soil conditions, climate, topography and other natural conditions;

(ii) The ability of the local, regional, state and international markets to support continued agricultural production; and

(iii) Any matter which might be relevant to evaluation of the petition.

SOURCES: Laws, 1997, ch. 469, § 3, eff from and after July 1, 1997.

§ 69-28-7. Petition for designation or redesignation of an agricultural district.

(a) Upon review of a petition, the local soil and water conservation district commissioners may approve designation of an agricultural district. A designated agricultural district shall be established for a period of five (5) years and reviewed for redesignation every five (5) years thereafter. However, the soil and water conservation district may review the status of designation at any time upon the written request and justification of the respective county board of supervisors, city board of aldermen, city council, city selectmen, city commissioners, city manager or mayor or upon a decision of the district commissioners that such a review is appropriate. The soil and water conservation district commissioners may sustain or repeal designation of an agricultural district based upon the following:

(i) The continued viability of the agricultural district. An agricultural district may become reduced in acreage based upon the voluntary withdrawal of any of the ownerships. However, the agricultural district shall cease to exist if the total acreage drops below twenty (20) acres;

(ii) The impacts and consequences of proposed land development; and

(iii) Other factors that the district commissioners may find relevant.

(b) Any ownership, or any successor heir of the ownership, within an agricultural district may withdraw from the agricultural district upon notifying the local soil and water conservation district in writing.

(c) Landowners may submit or resubmit petitions for designation or redesignation at any time to the local soil and water conservation district.

(d) If a petition is rejected or the local soil and water conservation district commissioners repeal designation of an agricultural district, the ownerships within the agricultural district may appeal the decision of the district commissioners to the State Soil and Water Conservation Commission. Based upon a review of all relevant information and following a public hearing, the State Soil and Water Conservation Commission may either sustain or overturn the decision of the local soil and water conservation district.

SOURCES: Laws, 1997, ch. 469, § 4, eff from and after July 1, 1997.

§ 69-28-9. Procedures, limitations and responsibilities of agricultural districts.

Upon establishment of an agricultural district, the following procedures, limitations and responsibilities shall apply:

(a) Any ownership within an agricultural district that has received a notice of condemnation proceedings against its property may request the local soil and water conservation district to conduct a public hearing to review the project's impact on that property. Such public hearing shall be held within forty-five (45) calendar days of the receipt of such summons of condemnation proceedings.

(b) The local soil and water conservation district with assistance of the State Soil and Water Conservation Commission shall provide appropriate notification about establishment of the agricultural district to local and state government agencies, local media and other communication networks. The soil and water conservation district shall also issue appropriate certificates of recognition to the respective ownerships within the agricultural district.

(c) The local soil and water conservation district, in cooperation with the local road manager, or his counterpart, as well as the Mississippi Department of Transportation, may erect signs as may be appropriate to recognize a designated agricultural district.

SOURCES: Laws, 1997, ch. 469, § 5, eff from and after July 1, 1997.

Cross References — Eminent domain proceedings, see Miss. Rule of Civ. Proc. 81.

§ 69-28-11. Soil and water conservation district.

An agricultural district may be comprised of ownerships residing in more than one (1) soil and water conservation district as long as the conditions of a contiguous boundary are satisfied. In such case, each soil and water conservation district shall have the responsibility to meet the requirements of this chapter within the county of its jurisdiction.

SOURCES: Laws, 1997, ch. 469, § 6, eff from and after July 1, 1997.

CHAPTER 29

Livestock Brands, Theft or Loss of Livestock and Protective Associations

Article 1. General Provisions 69-29-1
Article 3. Registration and Ownership of Livestock Brands 69-29-101
Article 5. Protective Associations 69-29-201
Article 7. Animal Research or Exhibiting Facility 69-29-301

ARTICLE 1.

GENERAL PROVISIONS.

SEC.
69-29-1. Mississippi Agricultural and Livestock Theft Bureau established; director; employment of investigators; powers, duties and authority of director; vehicles, equipment and supplies; cooperation and assistance of other agencies; timber product defined; timber products theft investigation.
69-29-2. License requirement of persons who transfer or sell certain animals for research.
69-29-3. Prohibition as to marking or branding of animals with intent to deprive owner of property.
69-29-5. Prohibition as to altering or defacing of brands or marks without owner's consent.
69-29-7. Butchers and dealers to keep register of brands and marks; penalty for violation.
69-29-9. Branding, misbranding or mismarking cattle or swine with intent to defraud; penalty.
69-29-11. Regulations as to transportation of livestock; penalty for violation.
69-29-13. Mortgaged cattle; notice of loss of same.
69-29-15. Unlawful removal of any collar, tag, or marking device on an animal without permission of owner; penalties.

§ 69-29-1. Mississippi Agricultural and Livestock Theft Bureau established; director; employment of investigators; powers, duties and authority of director; vehicles, equipment and supplies; cooperation and assistance of other agencies; timber product defined; timber products theft investigation.

(1)(a) There is established the Mississippi Agricultural and Livestock Theft Bureau.

(b) The Commissioner of Agriculture and Commerce shall appoint a director of the Mississippi Agricultural and Livestock Theft Bureau. Such director shall have at least five (5) years of law enforcement experience. Such director shall be responsible solely to the supervision of the Commissioner of Agriculture and to no other person or entity. Such director may be discharged only for just cause shown.

(c) The director may employ nine (9) agricultural and livestock theft investigators, one (1) from each highway patrol district, and each investigator is required to reside within the highway patrol district from which he or she is selected. Each investigator shall be certified as a law enforcement officer, successfully completing at least a nine-week training course, in accordance with Section 45-6-11. The curriculum for the training of constables shall not be sufficient for meeting the certification requirements of this paragraph. In the selection of investigators under this section, preference shall be given to persons who have previous law enforcement experience.

(d) The director appointed under this section, under the direction, control and supervision of the commissioner, and the investigators employed under this section shall perform only the duties described in subsection (2) of this section and shall not be assigned any other duties.

(2) The director appointed under this section and the investigators employed under this section shall have the following powers, duties and authority:

(a) To enforce all of the provisions of Sections 69-29-9 and 69-29-11, and particularly those portions requiring persons transporting livestock to have a bill of sale in their possession; to make investigations of violations of such sections and to arrest persons violating same;

(b) To enforce all of the laws of this state enacted for the purpose of preventing the theft of livestock, poultry, timber and agricultural, aquacultural and timber products and implements; to make investigations of violations thereof and to arrest persons violating same;

(c) To cooperate with all regularly constituted law enforcement officers relative to the matters herein set forth;

(d) To serve warrants and other process emanating from any court of lawful jurisdiction, including search warrants, in all matters herein set forth;

(e) To carry proper credentials evidencing their authority, which shall be exhibited to any person making demand therefor;

(f) To make arrests without warrant in all matters herein set forth in cases where same is authorized under the constitutional and general laws of this state;

(g) To handle the registration of brands of cattle and livestock;

(h) To investigate, prevent, apprehend and arrest those persons anywhere in the state who are violating any of the laws administered by the Department of Agriculture and Commerce, including, but not limited to, all agriculture-related crimes.

(i) To access and examine records of any person, business or entity that harvests, loads, carries, receives or manufactures timber products as defined in this section. Each such person or entity shall permit the director or any investigator of the Mississippi Agricultural and Livestock Theft Bureau to examine records of the sale, transfer or purchase of timber or timber products, including, but not limited to, contracts, load tickets, settlement sheets, drivers' logs, invoices, checks and any other records or documents related to an ongoing investigation of the Mississippi Agricultural and Livestock Theft Bureau.

(3) The Commissioner of Agriculture and Commerce shall furnish such investigators with such vehicles, equipment and supplies as may be necessary. All expenses of same, and all other expenses incurred in the administration of this section, shall be paid from such appropriation as may be made by the Legislature.

(4) The State Tax Commission and its agents and employees shall cooperate with such investigators by furnishing to them information as to any possible or suspected violations of any of the laws mentioned herein, including specifically Section 69-29-9, and in any other lawful manner.

(5) The conservation officers of the Department of Wildlife, Fisheries and Parks are authorized to cooperate with and assist the agricultural and livestock theft investigators in the enforcement and apprehension of violators of laws regarding agricultural and livestock theft.

(6) The Mississippi Forestry Commission employees are excluded from any timber and timber products theft investigative responsibilities except when technical expertise is needed and requested through the State Forester or his designee.

(7) For the purposes of this section, "timber product" means timber of all kinds, species or sizes, including, but not limited to, logs, lumber, poles, pilings, posts, blocks, bolts, cordwood and pulpwood, pine stumpwood, pine knots or other distillate wood, crossties, turpentine (crude gum), pine straw, firewood and all other products derived from timber or trees that have a sale or commercial value.

SOURCES: Codes, 1942, § 2025.5; Laws, 1950, ch. 394, §§ 1-4; Laws, 1952, ch. 168, § 1, 2 (¶¶ 1 and 2); Laws, 1962, ch. 154; Laws, 1974, ch. 569, § 22; Laws, 1993, ch. 508, § 1; Laws, 1997, ch. 450, § 1; Laws, 1998, ch. 386, § 1; Laws, 2004, ch. 419, § 1, eff from and after July 1, 2004.

Editor's Note — Section 49-1-1 provides that the term "State Game and Fish Commission" shall mean and refer to the Mississippi Commission on Wildlife, Fisheries and Parks.

Laws, 1993, ch. 508, § 13, effective July 1, 1993, provides as follows:

"SECTION 13. It is the intent of the Legislature that the Department of Public Safety shall assist the Mississippi Agricultural and Livestock Theft Bureau until such time as the Bureau is fully funded and operational."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Conservation officers authorized to assist in the detection and apprehension of violators of laws pertaining to theft of cattle, see § 49-1-44.

Mississippi Agriculture and Commerce Commissioner, see §§ 69-1-1 et seq.

Tranquilizers or drugs for livestock, see §§ 69-17-101 et seq.

Brands, marks, and transporting cattle, see §§ 69-29-9 et seq.

Brands in general, see §§ 69-29-101 et seq.

Petit larceny, see § 97-17-43.
Trespass less than larceny, see § 97-17-61.

ATTORNEY GENERAL OPINIONS

Mississippi Agricultural and Livestock Theft Bureau investigators have the authority to execute a grand jury capias and arrest defendants indicted for violations of Section 69-29-1 et seq. Spell, Apr. 11, 2003, A.G. Op. #03-0166.

RESEARCH REFERENCES

ALR. What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution. 81 A.L.R. Fed. 331.

CJS. 3B C.J.S., Animals §§ 35 et seq.

§ 69-29-2. License requirement of persons who transfer or sell certain animals for research.

(1) Every person, firm, association or corporation, before seeking to sell or transfer dogs or cats, or both, for research, shall obtain a license from the Director of the Mississippi Agricultural and Livestock Theft Bureau. The fee and requirements for such license shall be set by the Director of the Mississippi Agricultural and Livestock Theft Bureau. Application for such license shall be made on forms prescribed and furnished by the director. Such license shall be nontransferable, renewable annually. A new license shall be issued if there is any change in the location or ownership of the business.

(2) At the time application is made for a license under subsection (1) of this section and before the issuance of such license by the Director of the Mississippi Agricultural and Livestock Theft Bureau, the applicant shall file with the director a bond in the penal sum of Five Thousand Dollars ($5,000.00) payable to the State of Mississippi with surety to be approved by the Secretary of State for the faithful performance of the requirements of this section. Evidence shall be supplied to the director annually, at the time license is renewed, that the bond continues in force and effect. In the event the bond is cancelled or will not be renewed, the bonding company shall notify the director in writing at least thirty (30) days before the cancellation of such bond. If a bond is cancelled or fails to be renewed, the license issued under this section shall stand void automatically. The license shall not stand void if a new bond as required herein is filed with the director before the expiration date of the original bond.

(3) The following information shall be recorded by every person, firm, association or corporation licensed under this section for each dog or cat received, sold or transferred under the provisions of this section:

(a) The name, address and telephone number of the person, firm, association or corporation from whom each dog or cat was received and to whom each dog or cat was delivered.

(b) A complete description of each dog or cat received, sold or transferred, including a photograph of each side of the animal.

(c) Any other information as required by the Director of the Mississippi Agricultural and Livestock Theft Bureau.

(4) The Director of the Mississippi Agricultural and Livestock Theft Bureau shall promulgate rules and regulations necessary to effectuate the provisions of this section.

(5) Any person violating the provisions of this section, upon conviction for a first violation, shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both. Any person violating the provisions of this section, upon conviction for a second or subsequent violation, shall be punished by imprisonment in the Penitentiary for not less than one (1) year or a fine of not less than One Thousand Dollars ($1,000.00), or by both. Any person who holds a license issued under this section who is convicted of any violation of this section, shall have his license revoked for a minimum of one (1) year.

SOURCES: Laws, 1994, ch. 605, § 1, eff from and after July 1, 1994.

§ 69-29-3. Prohibition as to marking or branding of animals with intent to deprive owner of property.

If any person, knowingly, shall mark or brand any animal, the property of another, with a mark or brand calculated or intended to designate ownership not that of the owner, without the consent of the owner, or without authority of law, and with intent to deprive the owner of his property, he shall, on conviction thereof, be imprisoned, in the penitentiary not more than three years, or be fined in a sum not more than five hundred dollars, or imprisoned in the county jail for a period not longer than one year, or both.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7 (16); 1857, ch. 64, art. 30; 1871, § 2508; 1880, § 2723; 1892, § 977; 1906, § 1053; Hemingway's 1917, § 781; 1930, § 797; 1942, § 2022.

Cross References — Brands, marks, and transporting cattle, see §§ 69-29-9 et seq.
Brands in general, see §§ 69-29-101 et seq.
Theft of livestock as larceny, see § 97-17-53.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Larceny is not a constituent offense of the crime defined by this section. Cook v. State, 77 Miss. 800, 27 So. 605 (1900).

The statute is not unconstitutional because the crime may be punished as either a felony or a misdemeanor. Murrah v. State, 51 Miss. 652 (1875).

RESEARCH REFERENCES

CJS. 3A C.J.S., Animals §§ 24 et seq.

§ 69-29-5. Prohibition as to altering or defacing of brands or marks without owner's consent.

If any person shall knowingly alter or deface the brand or mark of any animal, intended to designate ownership, the property of another, without his consent, and with intent to deprive the owner of his property, he shall, on conviction, suffer the penalty provided in Section 69-29-3.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7 (15); 1857, ch. 64, art. 31; 1871, § 2509; 1880, § 2724; 1892, § 978; 1906, § 1054; Hemingway's 1917, § 782; 1930, § 798; 1942, § 2023.

Cross References — Branding of animals, generally, see §§ 69-29-101 et seq.

JUDICIAL DECISIONS

1. In general.

Indictment charging alteration of brand was defective for the reason that it failed to charge that the mark altered by the defendant was "intended to designate ownership". Smith v. State, 121 Miss. 37, 83 So. 337 (1919).

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 35 et seq.

§ 69-29-7. Butchers and dealers to keep register of brands and marks; penalty for violation.

Every butcher or dealer in cattle, sheep, or hogs, who shall fail to enter in a book or register the names of all persons for whom he buys, and a description by marks, brands, and otherwise of all animals bought or kept by him for slaughter, or to allow an inspection of such entries at any time, by any person interested to make it, shall, on conviction, be imprisoned in the county jail not exceeding six months, or be fined one hundred dollars, or both.

SOURCES: Codes, 1880, § 2726; 1892, § 979; 1906, § 1055; Hemingway's 1917, § 783; 1930, § 799; 1942, § 2024.

Cross References — Registration of brands by owners of livestock, see §§ 69-29-105 et seq.

JUDICIAL DECISIONS

1. In General.

Indictment charging that accused, being a dealer in livestock, unlawfully failed to keep any record of stock bought and sold, and did not enter names of all persons from whom he bought stock, and a description by marks and brands or otherwise of all animals bought is sufficient.

State v. Edwards, 115 Miss. 704, 76 So. 635 (1917).

§ 69-29-9. Branding, misbranding or mismarking cattle or swine with intent to defraud; penalty.

Any person who shall, with intent to defraud, brand or mis-brand, mark or mismark any neat cattle or swine not his own; or any person who shall intentionally brand over a previous brand or in any manner alter, deface or obliterate a previous brand or earmark, or shall cut out and obliterate a previous brand or earmark on any neat cattle or swine, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state penitentiary not less than six months nor more than one year.

SOURCES: Codes, 1942, § 2025; Laws, 1936, ch. 294.

Cross References — Unlawful acts relating to brands, generally, see § 69-29-117.

JUDICIAL DECISIONS

1. In general.

An instruction that every dealer in cattle is required when selling cattle to give to the buyer a bill of sale, having the signature and the address of the buyer and the date of sale and delivery, was properly refused, because this instruction adds nothing to the information of the jury relevant to the issue of the guilt vel non of the defendant. Lucas v. State, 211 Miss. 339, 51 So. 2d 583 (1951).

The action of sheriff who after spying a cow in truck on highway one quarter of a mile ahead, overtook the truck, asked defendant occupants if they had a bill of sale to cattle therein, and upon receiving negative answer and unsatisfactory explanation as to identification of alleged seller and the presence of cattle, took the defendants into custody, did not constitute an unlawful search and seizure. Huggins v. State, 209 Miss. 552, 47 So. 2d 852 (1950).

In prosecution for grand larceny of cattle, testimony of witness accompanying sheriff on patrolling expedition investigating cattle theft that the sheriff asked the defendants about a bill of sale of other cattle not covered by previous examination of witness was not prejudicial where court admonished the jury to disregard the question, and where the cross-examination of defendants disclosed the facts of other similar thefts in same neighborhood, including theft of cattle belonging to witnesses, and the failure of defendants to exhibit bill of sale. Huggins v. State, 209 Miss. 552, 47 So. 2d 852 (1950).

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 36 et seq.

§ 69-29-11. Regulations as to transportation of livestock; penalty for violation.

For any person to haul, transport or carry any livestock upon and over the public highways, roads and streets of this state by means of a motor vehicle or other vehicle drawn or propelled by a motor vehicle, such person shall have in his possession a bill of sale showing: (i) from whom such livestock was purchased; (ii) description of such livestock, with brands or earmarks, if any; (iii) signature and address of the seller; and (iv) the date of sale and delivery.

Any sheriff, constable, agricultural and livestock theft investigator or police officer shall have the power to inspect any livestock in the process of transportation upon the highways of Mississippi.

Any person who shall violate any provisions of this section, or Section 69-29-9, shall be deemed guilty of a misdemeanor and, upon conviction therefor, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and by imprisonment in the county jail not less than thirty (30) days nor more than six (6) months. Any person convicted of stealing livestock is subject to the penalties provided in Section 97-17-53.

SOURCES: Codes, 1942, § 2025; Laws, 1936, ch. 294; Laws, 1993, ch. 508, § 2, eff from and after July 1, 1993.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

An instruction that every dealer in cattle is required when selling cattle to give to the buyer a bill of sale, having the signature and the address of the buyer and the date of sale and delivery, was properly refused, because this instruction adds nothing to the information of the jury relevant to the issue of the guilt vel non of the defendant. Lucas v. State, 211 Miss. 339, 51 So. 2d 583 (1951).

The action of sheriff who after spying a cow in truck on highway one quarter of a mile ahead, overtook the truck, asked defendant occupants if they had a bill of sale to cattle therein, and upon receiving negative answer and unsatisfactory explanation as to identification of alleged seller and the presence of cattle, took the defendants into custody, did not constitute an unlawful search and seizure. Huggins v. State, 209 Miss. 552, 47 So. 2d 852 (1950).

In prosecution for grand larceny of cattle, testimony of witness accompanying sheriff on patrolling expedition investigating cattle theft that the sheriff asked the defendants about a bill of sale of other cattle not covered by previous examination of witness was not prejudicial where court admonished the jury to disregard the question, and where the cross-examination of defendants disclosed the facts of other similar thefts in same neighborhood, including theft of cattle belonging to witnesses, and the failure of defendants to exhibit bill of sale. Huggins v. State, 209 Miss. 552, 47 So. 2d 852 (1950).

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Legal Forms 2d, Animals, § 20:18 (bill of sale for branded cattle).

§ 69-29-13. Mortgaged cattle; notice of loss of same.

The owner of any cattle or stock which shall be mortgaged shall, within thirty days, give notice to the mortgagee of the death, theft or estray of any animal included in the lien created by said mortgage, if the mortgagor has knowledge of the death, theft or estray, and any owner who shall fail to give such notice shall be guilty of a misdemeanor and shall upon conviction, be fined not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00) or be imprisoned in the county jail for not more than sixty (60) days, or both.

SOURCES: Codes, Hemingway's 1917, § 1565; 1930, § 5473; 1942, § 4901; Laws, 1916, ch. 117.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 69-29-15. Unlawful removal of any collar, tag, or marking device on an animal without permission of owner; penalties.

It shall be unlawful for a person to remove any collar, tag or marking device on any animal not owned by such person and without the permission of the owner of the animal. Any person violating the provisions of this section, upon conviction for a first violation, shall be punished by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both. Any person violating the provisions of this section, upon conviction for a second or subsequent violation, shall be punished by imprisonment in the Penitentiary for not less than one (1) year or a fine of not less than One Thousand Dollars ($1,000.00), or by both.

SOURCES: Laws, 1994, ch. 605, § 2, eff from and after July 1, 1994.

ARTICLE 3.

REGISTRATION AND OWNERSHIP OF LIVESTOCK BRANDS.

SEC.

69-29-101. Purpose of article.
69-29-103. Definitions.
69-29-105. Registration and ownership of brands; transfer of registration and ownership; penalties for violation.
69-29-107. Copy of certificate of registration as evidence.
69-29-109. Reregistration and renewal of brands.
69-29-111. Forms; register of brands.
69-29-113. Livestock market operators and hide dealers to keep records.
69-29-115. Rules and regulations.
69-29-117. Unlawful acts.
69-29-119. Minor owner may have separate brands.
69-29-121. Penalty for violations.

§ 69-29-101. Purpose of article.

The purpose of this article is to provide a place for registration of brands or marks of cattle and other livestock in an appropriate bureau, which may be called the Mississippi Agricultural and Livestock Theft Bureau, in the Department of Agriculture and Commerce under the Commissioner of Agriculture and Commerce of the State of Mississippi, in order to avoid confusion as to brands or marks of cattle and other livestock, and to protect the owners against theft, and to aid the agricultural and livestock theft investigators in the Department of Agriculture and Commerce in tracing such cattle and other livestock when stolen, apprehending such thieves and returning the cattle and other livestock to the owner thereof.

SOURCES: Codes, 1942, § 4896-02; Laws, 1952, ch. 173, § 2; Laws, 1993, ch. 508, § 3, eff from and after July 1, 1993.

Cross References — Crimes involving brands and transporting of livestock, see §§ 69-29-1 et seq.

§ 69-29-103. Definitions.

The following words, or similar words, when used in this article shall have the following meaning unless the context clearly indicates otherwise:

(a) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi, under whose supervision this article is placed.

(b) "Bureau" means the Mississippi Agricultural and Livestock Theft Bureau, or its successor, in the Department of Agriculture and Commerce, under the administration of the Commissioner of Agriculture and Commerce for the apprehending of cattle and other livestock thieves.

(c) "Brand" means any recorded identification mark applied to any position on the hide of a live animal by means of heat, acid or chemical.

(d) "Person" means any individual, partnership, association or corporation.

(e) "Livestock" means horses, cattle, swine, sheep, poultry and other domestic or exotic animals, birds or fish produced for profit.

(f) "Livestock market" means any place at which a person assembles livestock either for public or private sale by him, such services to be compensated for by the owner on a commission basis or otherwise, or where such person purchases livestock for resale, except:

(i) Any place other than at a permanently established livestock market used solely for the dispersal sale of the livestock of a farmer, dairyman, livestock breeder or feeder who is discontinuing said business and no other livestock is there sold or offered for sale;

(ii) Any farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold, and no other livestock is brought there for sale or offered for sale;

(iii) The premises of any person engaged in the raising of livestock for breeding purposes only, who limits his or its sale to animals of his or its own production;

(iv) Any place where a breeder or an association of breeders of livestock of any class assemble and offer for sale and sell under his or their own management any livestock, when such breeder or association of breeders shall assume all responsibility of such sale and the title of livestock sold.

(g) "Mark" means a distinct marking or device placed on a live animal sufficient to distinguish the animal readily if it becomes intermixed with other animals, and includes a tattoo.

SOURCES: Codes, 1942, § 4896-01; Laws, 1952, ch. 173, § 1, eff July 1, 1952; Laws, 1993, ch. 508, § 4, eff from and after July 1, 1993.

Cross References — Mississippi Agriculture and Commerce Commissioner, see §§ 69-1-1 et seq.

Crimes involving brands and transporting of livestock, see § 69-29-3.

Fraud in obtaining registration of animals, see § 97-19-49.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 35 et seq.

§ 69-29-105. Registration and ownership of brands; transfer of registration and ownership; penalties for violation.

(1) Any cattle or other livestock owner, who uses or desires to use and adopt a brand or mark to identify his livestock must register his brand or mark by making application for such registration to the Department of Agriculture and Commerce. Not only all livestock owners who have their cattle branded before this law goes into effect must apply for registration, but also those persons who desire to brand or mark their livestock for the first time must apply for registration, and submit their proposed brand or mark to the department for clearing before it is applied. The application shall be made on forms prescribed and furnished by the department, which application shall be accompanied by a fee of Five Dollars ($5.00) and a facsimile of the brand or mark or proposed brand or mark to be registered shall also be furnished by the applicant. All fees collected hereunder for registration, transfer, or reregistration of brands or marks shall be deposited in the State Treasury. If the brand or mark described in the application has not previously been registered by another cattle owner, or does not closely resemble a registered brand or mark, the department shall approve the application, register the brand or mark in the name of the applicant, and issue to the applicant a certificate of registration. In case of duplication of brands or marks as shown by applications, the owner of the brand or mark who first records with the department will be recognized. When a livestock owner, who has registered a brand or mark with the department, transfers such brand or mark to another person, he shall immediately notify the department of the transfer, giving the date of transfer, and the name and address of the transferee. Upon receipt of the notice and a transfer fee of Two Dollars ($2.00), the department shall cause such transfer to be noted in the register of brands and marks, and such brand or mark shall not be used by the new owner until permission has been given by the department for the use of such brand or mark.

(2) No two (2) or more brands or marks of the same design or figure, and no two (2) or more earmarks of the same kind shall be adopted, designed and recorded, and when a brand, mark or earmark shall have been designed, adopted and recorded, the person so adopting and recording same shall be entitled to the exclusive use thereof, and it shall be his exclusive property, but the right to the use of such brand or mark may be sold and transferred by an instrument in writing, signed, acknowledged and recorded in the chancery clerk's office of the county where the brand, mark or earmark is recorded. When the right to the use of a brand, mark or earmark has been sold and transferred and recorded as herein provided, the chancery clerk shall note on the "brand, mark and earmark book" that such brand, mark or earmark has been sold and transferred, giving the book and page where such transfer is recorded.

(3) Any person who shall violate any of the provisions of subsection (2) of this section shall be deemed guilty of a misdemeanor and, upon conviction therefor, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and by imprisonment in the county jail not less than thirty (30) days nor more than six (6) months. Any person convicted of stealing livestock is subject to the penalties provided in Section 97-17-53.

SOURCES: Codes, 1942, §§ 2025, 4896-03; Laws, 1936, ch. 294; Laws, 1952, ch. 173, § 3; Laws, 1976, ch. 342, § 1; Laws, 1993, ch. 508, § 5, eff from and after July 1, 1993.

Cross References — Fraud in obtaining registration of animals, see § 97-19-49.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

An instruction that every dealer in cattle is required when selling cattle to give to the buyer a bill of sale, having the signature and the address of the buyer and the date of sale and delivery, was properly refused, because this instruction adds nothing to the information of the jury relevant to the issue of the guilt vel non of the defendant. Lucas v. State, 211 Miss. 339, 51 So. 2d 583 (1951).

The action of sheriff who after spying a cow in truck on highway one quarter of a mile ahead, overtook the truck, asked defendant occupants if they had a bill of sale to cattle therein, and upon receiving negative answer and unsatisfactory explanation as to identification of alleged seller and the presence of cattle, took the defendants into custody, did not constitute an unlawful search and seizure. Huggins v. State, 209 Miss. 552, 47 So. 2d 852 (1950).

In prosecution for grand larceny of cattle, testimony of witness accompanying sheriff on patrolling expedition investigating cattle theft that the sheriff asked the defendants about a bill of sale of other cattle not covered by previous examination of witness was not prejudicial where court admonished the jury to disregard the question, and where the cross-examination of defendants disclosed the facts of other similar thefts in same neighborhood, including theft of cattle belonging to witnesses, and the failure of defendants to exhibit bill of sale. Huggins v. State, 209 Miss. 552, 47 So. 2d 852 (1950).

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 35 et seq.

§ 69-29-107. Copy of certificate of registration as evidence.

In all suits at law or in equity, or in any criminal proceedings when the title or right of possession is involved, a copy of the certificate of brand or mark registration verified by affidavit of the department shall be received in evidence by the court as evidence of the registration of such brand or mark in accordance with the requirements of this article.

SOURCES: Codes, 1942, § 4896-04; Laws, 1952, ch. 173, § 4, eff July 1, 1952; Laws, 1993, ch. 508, § 6, eff from and after July 1, 1993.

§ 69-29-109. Reregistration and renewal of brands.

All brands or marks of cattle and other livestock, upon being registered with the department shall be reregistered once every five (5) years thereafter. Those brands or marks which have been filed and recorded in the Office of the Secretary of State after January 1, 1946, give the owner priority to the use of such brand or mark, and in event of duplication, the brand or mark first filed with the Secretary of State shall have priority over any same or similar brand or mark filed with the Secretary of State thereafter.

After the effective date of this article it shall be necessary for all such owners of brands or marks who have filed and recorded brands or marks in the Office of the Secretary of State after January 1, 1946, to reregister any and all such brands or marks with the department, and pay the necessary registration fee. Brands or marks recorded in the Office of the Secretary of State before January 1, 1946, are not recognized for the purpose of priority, because of the confused state of the records. After the registration of such brands or marks with the department, they must be reregistered not later than five (5) years thereafter, or ownership thereto will be lost.

All brands or marks registered after the effective date of this article shall be reregistered on or before five (5) years after the date of registration. Upon the transfer of any such brand or mark, notice of such transfer shall be furnished the department by the transferor, and the department shall keep a record of all such transfers.

At least ninety (90) days before the renewal date for all brands or marks, the department shall notify all persons having brands or marks registered of the date on which such brand or mark must be renewed. On or before the renewal date of all brands or marks the registered owner thereof shall pay to the department a renewal fee of Five Dollars ($5.00) and shall furnish such additional information as the department may require on forms to be furnished by the department. If any cattle owner fails to renew any brand or mark registered in his name, such brand or mark shall be forfeited and shall be available to any other applicant.

SOURCES: Codes, 1942, § 4896-05; Laws, 1952, ch. 173 § 5; Laws, 1976, ch. 342, § 2; Laws, 1993, ch. 508, § 7, eff from and after July 1, 1993.

§ 69-29-111. Forms; register of brands.

The Department of Agriculture and Commerce shall prescribe and furnish forms on which applications for registration, reregistration and transfer of brands or marks shall be made and shall furnish such forms to the sheriff and the county agricultural agent of each county of the state to be distributed on request to livestock owners desiring to make application for registration of brands or marks and such applications may also be furnished to applicants by the department. The department shall maintain a complete register of all brands or marks, showing the name and address of the owner, and shall annually publish and distribute copies of this register and supplementary copies thereof to every livestock market and sheriff's office and chancery clerk in the state. Copies of the register of brands and marks may be furnished to other persons requesting such copies, at a price to be determined by the department. Copies of the register of brands and marks shall be published in booklet form. The department shall also determine from its records of registration the ownership of any estrayed cattle and furnish such information to interested persons, upon receipt of notice giving details of the kind of animal, color, weight, size, sex, age, marks, brands and other identifying information.

SOURCES: Codes, 1942, § 4896-06; Laws, 1952, ch. 173, § 6; Laws, 1993, ch. 508, § 8, eff from and after July 1, 1993.

Cross References — Estrays, generally, see §§ 69-13-301 et seq.

§ 69-29-113. Livestock market operators and hide dealers to keep records.

(1) Every operator of a livestock market where livestock is sold shall keep a copy of the register of brands and marks in his place of business where it will be easily accessible for public inspection.

(2) The operator of every livestock market where livestock is sold, together with all dealers, slaughterers and butchers who buy livestock for slaughter which was not purchased at a livestock market, shall keep a record covering all livestock received, including:

(a) The name and address of the owner of the livestock;

(b) The license tag number of the vehicle delivering the livestock;

(c) The name and address of the driver of the vehicle delivering the livestock and his motor vehicle operator's license number or Social Security number, preferably both;

(d) The number of livestock received; and

(e) A description of livestock including color.

These records shall be kept for public inspection for a period of two (2) years after the livestock is received.

(3) Livestock hide dealers are required to keep a record of all hides of livestock received by them, including:

(a) The name and address of the owner of the hides;

(b) The vehicle tag number of the vehicle delivering the hides;

(c) The name and address of the driver of the vehicle and his motor vehicle operator's license number or Social Security number, preferably both; and

(d) A description of the hides, including any brands or marks.

Livestock hide dealers shall keep such records for a period of two (2) years from the time of purchase.

(4) Any livestock market operator, dealer, slaughterer, butcher or livestock hide dealer who fails to keep these records and make them available to authorized inspectors or officers of the law shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00).

SOURCES: Codes, 1942, § 4896-07; Laws, 1952, ch. 173, § 7; Laws, 1971, ch. 491, § 2; Laws, 1993, ch. 508, § 9, eff from and after July 1, 1993.

§ 69-29-115. Rules and regulations.

The Department of Agriculture and Commerce shall have authority to promulgate such rules and regulations as are reasonably necessary to carry out the intent and purpose of this article and that shall facilitate the tracing and identification of livestock and afford protection against stealing and unlawful dealing in livestock.

Any driver moving livestock from any advertised sale shall have a bill of sale or other written evidence of purchase for the livestock in his possession, to be shown on request of any duly authorized law enforcement officer and to be delivered to the purchaser with delivery of the livestock.

SOURCES: Codes, 1942, § 4896-08; Laws, 1952, ch. 173, § 8; Laws, 1971, ch. 491, § 3; Laws, 1993, ch. 508, § 10, eff from and after July 1, 1993.

§ 69-29-117. Unlawful acts.

It shall be unlawful for:

(a) Any person to use any brand or mark for branding cattle or other livestock unless the brand or mark is registered with the Department of Agriculture and Commerce;

(b) Any person to obliterate, alter or deface the brand or mark of any animals;

(c) Any livestock market to receive and sell livestock unless records of such sale are kept in accordance with the requirements of this article;

(d) Any livestock market to fail to keep a copy of the register of brands and marks furnished to them by the department in a place easily accessible to interested parties;

(e) Any livestock hide dealer to fail or refuse to keep records required by subsection (c) of Section 69-29-113.

SOURCES: Codes, 1942, § 4896-09; Laws, 1952, ch. 173, § 9; Laws, 1993, ch. 508, § 11, eff from and after July 1, 1993.

Cross References — Crimes involving brands and transportation of livestock, see §§ 69-29-1 et seq.

RESEARCH REFERENCES

CJS. 3B C.J.S., Animals §§ 36 et seq.

§ 69-29-119. Minor owner may have separate brands.

Minors owning cattle or stock separate from that of the father or guardian may have a brand and mark, which shall be recorded; the father or guardian shall be responsible for the proper use of such brand and mark of any such minor.

SOURCES: Codes, Hemingway's 1917, § 1561; 1930, § 5469; 1942, § 4897; Laws, 1916, ch. 117.

§ 69-29-121. Penalty for violations.

Any person who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Twenty-five Dollars ($25.00), nor more than Five Hundred Dollars ($500.00), or by imprisonment for a term of not more than six months, or both, in the discretion of the court.

SOURCES: Codes, 1942, § 4896-10; Laws, 1952, ch. 173, § 10, eff July 1, 1952.

Cross References — Penalties for commission of crimes relating to brands and transportation of livestock, see §§ 69-29-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 5.

PROTECTIVE ASSOCIATIONS.

SEC.
69-29-201. Purposes, organization, powers and duties.
69-29-203. Assistance to sheriff in apprehending thieves; reward.
69-29-205. Reports.

§ 69-29-201. Purposes, organization, powers and duties.

For the purpose of encouraging the production of more and better livestock and poultry in this state, and for the purpose of preventing theft of livestock and poultry by posting cash rewards for the arrest and conviction of livestock and poultry thieves, and requesting the Governor to aid by posting rewards and employing detectives for this purpose, all owners of livestock and poultry and land owners in any county are hereby authorized and encouraged to organize a county livestock and poultry owners protective association, hereinafter referred to as the association. All persons owning land in the county and all persons owning any livestock or poultry in the county are eligible to membership in the association. They shall organize by meeting at the county courthouse, by electing a president of the association and a secretary, and a treasurer, who shall each agree to serve for one year, without pay, when their successors shall be elected. There shall be a board of directors, not to exceed three members from each beat in the county, elected at the same time and in the same manner as the other officers. No legal charter of incorporation shall be necessary. Each county association shall have authority to make and publish its own by-laws and fix the amount of annual dues. The association, being purely voluntary, may disband or continue to function, as the members shall determine. Any association already organized in any county shall be deemed to be lawfully organized for the purpose of this article.

SOURCES: Codes, 1942, § 4908; Laws, 1940, ch. 209; Laws, 1942, ch. 259.

Cross References — Employment of officers for enforcement of laws relating to brands and transportation of livestock, see § 69-29-1.

§ 69-29-203. Assistance to sheriff in apprehending thieves; reward.

When the theft of any livestock or poultry shall be reported to the sheriff of the county where the theft occurred, it shall be the duty of the sheriff to make prompt and diligent effort to arrest the thief or thieves. At the same time, it shall be the duty of the president of the association to assist the sheriff in the capture of the thief or thieves by posting or publishing the standing reward offered by the association for information leading to arrest and conviction of the said thief or thieves, but in case of a theft of poultry no such reward shall be offered by the association where the value of the poultry stolen would amount to a misdemeanor only. When additional assistance may be needed to bring those guilty of the theft of any livestock or poultry to justice, the president of the association, or in his absence or disability, three or more directors of the association may, in their discretion, notify the Governor and request his assistance. When the Governor shall receive such request it shall then be his duty to offer such reward as he may deem proper for arrest and conviction of the said thief or thieves, or for information leading to the arrest and conviction, but such reward shall not exceed Fifty Dollars ($50.00) in any particular case. In case it is impossible to break up livestock and poultry thefts without employment of detectives, then the Governor may, in his discretion, employ a reliable detective to assist the sheriff and the association in any county. The reward to be offered by the Governor and the expense of detectives shall be paid out of the Governor's contingent fund.

SOURCES: Codes, 1942, § 4909; Laws, 1940, ch. 209; Laws, 1942, ch. 259.

§ 69-29-205. Reports.

It shall be the duty of the secretary of each county association to file annually with the Governor a report, countersigned by the president and treasurer of the association, showing the names of all officers and directors, the number of members, the amount of dues collected, the amount paid by the association in rewards, the number of arrests and convictions, the number of thefts of livestock and poultry, and the number stolen and recovered. It shall be the duty of the Governor to report to the Legislature in detail his expenditures from contingent fund, in an itemized statement, and he shall have on file in his office for the information of members of the Legislature the information furnished by the various county associations.

SOURCES: Codes, 1942, § 4910; Laws, 1940, ch. 209; Laws, 1942, ch. 259.

ARTICLE 7.

ANIMAL RESEARCH OR EXHIBITING FACILITY.

SEC.
69-29-301. Short title.
69-29-303. Definitions.
69-29-305. Prohibition against acquisition or exercise of control over animal facility with intent to disrupt or damage enterprise conducted at facility without consent of owner.
69-29-307. Prohibition against damaging or destroying animal or animal facility with intent to disrupt or damage without consent of owner.
69-29-309. Prohibition against entering or remaining concealed in animal facility to commit prohibited act without consent of owner.
69-29-311. Prohibition against entering or remaining in animal facility with intent to disrupt or damage enterprise conducted at facility without consent of owner; notice requirement; definitions.
69-29-313. Applicability.
69-29-315. Penalties for violations.

§ 69-29-301. Short title.

This article may be cited and shall be known as the "Animal Research or Exhibiting Facilities Protection Act."

SOURCES: Law, 1996, ch. 424, § 1, eff from and after July 1, 1996.

§ 69-29-303. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Actor" means a person accused of any of the offenses defined in this act.

(b) "Animal" means a warm or cold-blooded animal used in food or fiber production, agriculture, exhibition, research, testing, experimentation or education, including poultry, fish and insects.

(c) "Animal research or exhibiting facility," hereinafter referred to as an "animal facility," includes a vehicle, building, separately secured yard, pad, pond, enclosure, structure or premises where an animal is kept, shown, handled, housed, exhibited, bred or offered for sale and any building, laboratory, institution, organization or school in which a person or persons are engaged in research, testing, educational or experimental activities or in which any commercial or academic enterprise is using warm-blooded or cold-blooded animals for food or fiber production, agriculture, research, testing, experimentation or education.

(d) "Consent" means assent in fact, whether express or apparent.

(e) "Deprive" means:

(i) To purposely or knowingly withhold an animal or other property from the owner permanently or for such an extended time that a major portion of the value or enjoyment of the animal or property is lost to the owner;

(ii) To restore the animal or other property only upon payment for reward or other compensation; or

(iii) To dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.

(f) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(i) Induced by force, threat, false pretenses or fraud;

(ii) Given by a person the actor knows is not legally authorized to act for the owner;

(iii) Given by a person who by reason of youth, mental disease or defect or intoxication is known by the actor to be unable to make reasonable decisions; or

(iv) Given solely to detect the commission of an offense.

(g) "Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

(h) "Person" means an individual, corporation, association, nonprofit corporation, joint-stock company, firm, trust, partnership, two (2) or more persons having a joint or common interest or other legal entity.

(i) "Possession" means actual care, custody, control or management.

SOURCES: Law, 1996, ch. 424, § 2, eff from and after July 1, 1996.

§ 69-29-305. Prohibition against acquisition or exercise of control over animal facility with intent to disrupt or damage enterprise conducted at facility without consent of owner.

A person shall not, without the effective consent of the owner, acquire or otherwise exercise control over an animal facility, an animal from an animal facility or other property from an animal facility with the intent to deprive the owner of the facility, animal or property and to disrupt or damage the enterprise conducted at the animal facility.

SOURCES: Law, 1996, ch. 424, § 3, eff from and after July 1, 1996.

Cross References — Penalties, see § 69-29-315.

§ 69-29-307. Prohibition against damaging or destroying animal or animal facility with intent to disrupt or damage without consent of owner.

A person shall not, without the effective consent of the owner, damage or destroy an animal facility or an animal or property in or on an animal facility with the intent to disrupt or damage the enterprise conducted at the animal facility.

SOURCES: Law, 1996, ch. 424, § 4, eff from and after July 1, 1996.

Cross References — Penalties, see § 69-29-315.

§ 69-29-309. Prohibition against entering or remaining concealed in animal facility to commit prohibited act without consent of owner.

A person shall not, without the effective consent of the owner, with the intent to disrupt or damage the enterprise conducted at the animal facility:

(a) Enter an animal facility, not then open to the public, with intent to commit an act prohibited by this act;

(b) Remain concealed, with intent to commit an act prohibited by this act, in an animal facility; or

(c) Enter an animal facility and commit or attempt to commit an act prohibited by this act.

SOURCES: Law, 1996, ch. 424, § 5, eff from and after July 1, 1996.

Cross References — Penalties, see § 69-29-315.

§ 69-29-311. Prohibition against entering or remaining in animal facility with intent to disrupt or damage enterprise conducted at facility without consent of owner; notice requirement; definitions.

(1) A person shall not, without the effective consent of the owner, enter or remain in an animal facility with the intent to disrupt or damage the enterprise conducted at the animal facility if the person:

(a) Had notice that the entry was forbidden; or

(b) Received notice to depart but failed to do so.

(2) For purposes of this section, "notice" means:

(a) Oral or written communication by the owner or someone with apparent authority to act for the owner;

(b) Fencing or other enclosure obviously designed to exclude intruders or to contain animals; or

(c) A sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.

SOURCES: Law, 1996, ch. 424, § 6, eff from and after July 1, 1996.

Cross References — Penalties, see § 69-29-315.

§ 69-29-313. Applicability.

This article does not apply to, affect or otherwise prohibit actions taken by the Department of Agriculture and Commerce, any other federal, state or local department or agency or an official or employee of these entities while in the exercise or performance of a power of duty imposed by law or regulation.

SOURCES: Law, 1996, ch. 424, § 7, eff from and after July 1, 1996.

§ 69-29-315. Penalties for violations.

(1) A person violating the provisions of Sections 69-29-305, 69-29-307 and 69-29-309, upon conviction, shall be punished by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than three (3) years, or both.

(2) A person violating the provisions of Section 69-29-311, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than one (1) year, or both.

SOURCES: Law, 1996, ch. 424, § 8, eff from and after July 1, 1996.

CHAPTER 31

Regulation of Moisture-Measuring Devices

SEC.
69-31-1. Definitions.
69-31-3. Commissioner of Agriculture and Commerce to enforce chapter.
69-31-5. Inspection of devices.
69-31-7. Seals to be placed on inspected devices.
69-31-9. Defective devices used to measure moisture; reinspection.
69-31-11. Device to be used in location visible to general public; display of procedure for operation of device.
69-31-13. Grain moisture; measuring devices; inspection and use.
69-31-15. Penalties.

§ 69-31-1. Definitions.

As used in this chapter, unless the context requires otherwise:

(a) "Agricultural products" means any product of agriculture which is tested for moisture content when offered for sale, processing or storage.

(b) "Commissioner" means the commissioner of the Mississippi Department of Agriculture and Commerce.

(c) "Department" means the department of agriculture and commerce.

(d) "Moisture-measuring devices" means any device or instrument used by any person in proving or ascertaining the moisture content of agricultural products.

(e) "Person" means any individual, corporation, partnership, cooperative association, or two (2) or more persons having a joint or common interest in the same venture.

SOURCES: Laws, 1978, ch. 466, § 1, eff from and after July 1, 1978.

§ 69-31-3. Commissioner of Agriculture and Commerce to enforce chapter.

The commissioner is hereby charged with the enforcement of this chapter and is empowered to promulgate rules, regulations, specifications, standards and tests as may be necessary in order to secure the efficient administration of this chapter. The department may, from time to time, publish such data in connection with the administration of this chapter as may be of public interest.

SOURCES: Laws, 1978, ch. 466, § 3, eff from and after July 1, 1978.

Cross References — Duties of Commissioner of Agriculture and Commerce, generally, see § 69-1-13.

Duties of commissioner in connection with the regulation of devices for measuring the moisture content of agricultural products, see § 69-31-1 et seq.

§ 69-31-5. Inspection of devices.

The department shall inspect or cause to be inspected at least annually every moisture-measuring device used in commerce in this state, except those belonging to the United States or the state, or any subdivision of either, except as may be requested. The department may inspect or cause to be inspected at the convenience of the department any moisture-measuring device upon a request in writing from the owner.

SOURCES: Laws, 1978, ch. 466, § 2, eff from and after July 1, 1978.

§ 69-31-7. Seals to be placed on inspected devices.

If an inspection or comparative test reveals that the moisture-measuring device being inspected or tested conforms to the standards and specifications established by the department, the department shall cause the same to be marked with an appropriate seal. Any moisture-measuring device which upon inspection is found not to conform with the specifications and standards established by the department shall be marked with an appropriate seal showing such device to be defective. The seal shall not be altered or removed until said moisture-measuring device is properly repaired and reinspected. The department shall notify the owner or user of such device of its defective condition. Notification shall be made on an inspection form prepared by the department.

SOURCES: Laws, 1978, ch. 466, § 4, eff from and after July 1, 1978.

§ 69-31-9. Defective devices used to measure moisture; reinspection.

(1) Any defective moisture-measuring device, while so marked, sealed, or tagged, as provided in Section 69-31-7, may be used to ascertain the moisture content of agricultural products offered for sale, processing or storage, only under the following conditions:

(a) The owner or user shall make adjustment for error on all agricultural products tested, and the owner or user shall keep a record open to inspection, of every commercial sample of agricultural products inspected by means of the defective device, showing that such adjustment was made on all such agricultural products tested.

(b) The device shall be repaired to comply with Section 69-31-7 within thirty (30) days after inspection and the department thereupon notified that the device has been repaired accordingly.

(2) If, upon reinspection, the device is again rejected under the provisions of Section 69-31-7, such device shall be sealed and shall not be used until repaired and reinspected.

SOURCES: Laws, 1978, ch. 466, § 5, eff from and after July 1, 1978.

§ 69-31-11. Device to be used in location visible to general public; display of procedure for operation of device.

Every moisture-measuring device offered for sale, processing or storage shall be used in a location visible to the general public and the detailed procedure for operating a moisture-measuring device shall be displayed in a conspicuous place proximate to the moisture-measuring device.

SOURCES: Laws, 1978, ch. 466, § 6, eff from and after July 1, 1978.

§ 69-31-13. Grain moisture; measuring devices; inspection and use.

After May 1, 1979, no person shall use or cause to be used any grain moisture-measuring device which has not been inspected and approved for use by the department; except that after May 1, 1979, a newly purchased grain moisture-measuring device may be used prior to regular inspection and approval if the user of such device has given at least ten (10) days' notice to the department of the purchase prior to the use of such new device.

SOURCES: Laws, 1978, ch. 466, § 7, eff from and after July 1, 1978.

§ 69-31-15. Penalties.

Any person who uses or causes to be used a moisture-measuring device in commerce with the knowledge that such device has not been inspected and approved by the department, in accordance with the provisions of this chapter, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a period not to exceed six (6) months, or by both such fine and imprisonment.

SOURCES: Laws, 1978, ch. 466, § 8, eff from and after July 1, 1978.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 33

Pecan Harvesting

Sec.
69-33-1. Definitions.
69-33-3. Removal of pecans from public right-of-way during harvesting season prohibited.
69-33-5. Pecans left on public right-of-way after harvesting season deemed abandoned.
69-33-7. Normal road maintenance to continue; owners not authorized to harvest pecans from interstate or limited access rights-of-way.
69-33-9. Penalty for violations.

§ 69-33-1. Definitions.

For the purpose of this chapter, the following words shall have the following meanings unless the context shall prescribe otherwise:

(a) "Owner" means the person, firm or corporation owning the land on which pecan trees are growing or the person, firm or corporation having legal possession of such land.

(b) "Harvesting season" means that portion of each calendar year beginning on October 1 and ending December 31.

SOURCES: Laws, 1981, ch. 391, § 1, eff from and after July 1, 1981.

§ 69-33-3. Removal of pecans from public right-of-way during harvesting season prohibited.

When pecan trees are grown on private property and the branches of such trees extend over a public road, street or highway right-of-way, any pecans falling from any such pecan trees onto such public right-of-way shall be deemed the property of the owner of such pecan trees until the end of the harvesting season, and it shall be unlawful for any person, without the permission of the owner of such trees, to remove such pecans from any such public right-of-way during the harvesting season. It shall be unlawful for any person, without the permission of the owner of such trees, to pick or otherwise remove any pecans from the limbs or branches of pecan trees or to cause pecans to fall from such trees.

SOURCES: Laws, 1981, ch. 391, § 2, eff from and after July 1, 1981.

Cross References — Criminal offense of cutting or rafting pecan trees on lands of others, see §§ 97-7-65, 97-17-81.

Trespass and destruction or carrying away of vegetation or agricultural products, see § 97-17-89.

§ 69-33-5. Pecans left on public right-of-way after harvesting season deemed abandoned.

Any pecans remaining on a public road, street or highway right-of-way during that portion of each calendar year except the harvesting season shall be deemed to be abandoned by the owner of such pecans, and it shall not be unlawful for any person to remove such pecans from such public right-of-way, except during the harvesting season.

SOURCES: Laws, 1981, ch. 391, § 3, eff from and after July 1, 1981.

§ 69-33-7. Normal road maintenance to continue; owners not authorized to harvest pecans from interstate or limited access rights-of-way.

The provisions of this chapter shall not be construed to prohibit employees of the state highway department or the employees of a county or municipality from engaging in normal activities of maintenance on the rights-of-way of public roads, streets or highways. Nor shall the provisions of this chapter be construed to grant the owner of any pecan trees the right to harvest pecans from the rights-of-way of any interstate or other limited access highway.

SOURCES: Laws, 1981, ch. 391, § 4, eff from and after July 1, 1981.

§ 69-33-9. Penalty for violations.

Any person who shall be found guilty of violating the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding One Hundred Dollars ($100.00) or be imprisoned not exceeding thirty (30) days in the county jail, or both.

SOURCES: Laws, 1981, ch. 391, § 5, eff from and after July 1, 1981.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 34

Milk Producers Transportation Cost Assistance Loan Program

Sec.

69-34-1. Milk Producers Transportation Cost Assistance Loan Fund; purpose; administration of loan program; eligibility for loans [Repealed effective December 31, 2012].

§ 69-34-1. Milk Producers Transportation Cost Assistance Loan Fund; purpose; administration of loan program; eligibility for loans [Repealed effective December 31, 2012].

(1) There is hereby created in the State Treasury a special fund to be designated as the "Milk Producers Transportation Cost Assistance Loan Fund," which shall consist of funds from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used for loans to milk producers who are eligible under this section.

(2) The Mississippi Development Authority shall establish a loan program to make loans to residents of this state who are engaged in the business of producing milk (milk producers) for fuel transportation costs and other costs incurred in the delivery of milk by such milk producers.

(3) In order to be eligible for a loan under this section, a milk producer must produce and sell at least three hundred thousand (300,000) pounds of milk during a calendar year. The maximum amount that may be loaned to a milk producer under this section is Twenty Thousand Dollars ($20,000.00) or the actual fuel costs and other costs incurred in the transportation and delivery of milk by a milk producer, whichever is less.

(4) The Mississippi State University Cooperative Extension Service shall promulgate rules and regulations necessary for determining whether a milk producer is eligible for a loan under this section and shall certify to the Mississippi Development Authority whether a milk producer requesting a loan has satisfied the eligibility requirements of this section.

(5) A milk producer desiring a loan under this section must submit an application for a loan to the Mississippi Development Authority. The application must include any information required by the Mississippi Development Authority.

(6) The loans made under this section shall bear no interest. The loans shall be amortized over a period of ninety-six (96) months and payments on such loans shall begin on or after July 1, 2009.

(7) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this section, and the department shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this section.

(8) This section shall stand repealed from and after December 31, 2012.

SOURCES: Laws, 2007, ch. 571, § 1; Laws, 2009, ch. 389, § 1, eff from and after July 1, 2009.

CHAPTER 35

Mississippi Dairy Promotion Act

Sec.
69-35-1. Title.
69-35-3. Legislative findings, purpose and policy.
69-35-5. Definitions.
69-35-7. Activities under chapter not illegal or in restraint of trade.
69-35-9. Dairy producers' referendum on levying milk assessment.
69-35-11. Procedures for holding referendum; ballots; maximum assessment.
69-35-13. Supervision of referendum; expense.
69-35-15. Referendum to be statewide; question to be submitted.
69-35-17. Majority vote rules.
69-35-19. Defeat of referendum; subsequent referendums.
69-35-21. Time, manner, and form of giving notice of referendum; contents of notice.
69-35-23. Preparation and distribution of ballots; conduct of referendum; results.
69-35-25. Vote of cooperative associations.
69-35-27. Collection of assessment; failure to pay assessment.
69-35-29. Refund of assessments.
69-35-31. Report of amount of assessments received and collected.
69-35-33. Date of initial referendum.

§ 69-35-1. Title.

This act shall be known as the "Mississippi Dairy Promotion Act."

SOURCES: Laws, 1989, ch. 504, § 1, eff from and after passage (approved April 4, 1989).

§ 69-35-3. Legislative findings, purpose and policy.

(1) It is hereby declared and the Legislature hereby finds that:

(a) Dairy products are basic foods that are a valuable part of the human diet;

(b) The production of dairy products plays a significant role in the state's economy, the milk from which dairy products are manufactured is produced by milk producers and dairy products are consumed by thousands of people throughout the state and the United States;

(c) Dairy products must be readily available and marketed efficiently to ensure that the people of the state receive adequate nourishment;

(d) The maintenance and expansion of existing markets for dairy products are vital to the welfare of milk producers and those concerned with marketing, using and producing dairy products, as well as to the general economy of the state;

(e) Dairy products move in intrastate, interstate and foreign commerce;

(f) The Ninety-eighth Congress of the United States enacted the Dairy Production Stabilization Act of 1983 and established the National Dairy Board (7 U.S.C. 4501 et seq.) authorizing the establishment of orderly procedures for financing promotional and educational programs for milk and dairy products through a mandatory Fifteen Cents (15¢) per hundredweight assessment on all milk produced in the United States for commercial use, and the carrying out of a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace, and authorizing such orderly procedures to permit a milk producer or a producer's cooperative to establish that the producer is participating in active, ongoing qualified state or regional dairy product promotion or nutrition education programs intended to increase consumption of milk and dairy products generally, to receive credit in determining the assessment due from such producer for contributions to such state programs in an amount not in excess of Ten Cents (10¢) per hundredweight of milk marketed; and

(g) The American Dairy Association of Mississippi has been designated by the Secretary of Agriculture of the United States Department of Agriculture as a qualified promotional organization pursuant to the terms of the Dairy Production Stabilization Act of 1983 (7 U.S.C. Section 4501 et seq).

(2) It, therefore, is declared to be the policy of the Legislature that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this act, of an orderly procedure for financing (through assessments on all milk produced in the state for commercial use) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the state and the United States. All funds obtained by the state ADA as a result of the passage of this act shall be exclusively utilized to promote the dairy industry within the State of Mississippi, and its contiguous states. Nothing in this act may be construed to provide for the control of production or otherwise limit the right of individual milk producers to produce milk.

SOURCES: Laws, 1989, ch. 504, § 2, eff from and after passage (approved April 4, 1989).

§ 69-35-5. Definitions.

The following terms shall have the following meanings unless context shall provide otherwise:

(a) "State" means the State of Mississippi;

(b) "Milk" means any class of cow's milk produced in the state;

(c) "Dairy products" means products manufactured for human consumption which are derived from the processing of milk and includes fluid milk products;

(d) "Fluid milk products" means those products normally consumed in liquid form as a beverage;

(e) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative association, or any other entity;

(f) "Producer" means any person engaged in the production of milk for commercial use;

(g) "Promotion" means actions such as paid advertising, sales promotion and publicity to advance the image and sales of and demand for dairy products;

(h) "Nutrition education" means those activities intended to broaden the understanding of sound nutritional principle including the role of milk and dairy products in a balanced diet;

(i) "State ADA" means the American Dairy Association of Mississippi;

(j) "Extension service" means the Mississippi Cooperative Extension Service;

(k) "Bulk tank unit" means a bulk tank unit as defined in accordance with the State Board of Health, Dairy Inspection Division;

(*l*) "Block voting" means the vote cast by associations approved to be eligible to vote as described in Section 69-35-25;

(m) "Handler" means any person engaged in the business of distributing, marketing, or in any manner handling fluid milk or dairy products, in whole or in part, for consumption;

(n) "National Dairy Board" means the National Dairy Promotion and Research Board established under 7 U.S.C. 4504, as amended;

(o) "Act" shall mean the Mississippi Dairy Promotion Act; and

(p) "Cooperative association" means any cooperative marketing association of producers which is organized under the provisions of the act of Congress of February 18, 1922, known as the "Capper-Volstead Act."

SOURCES: Laws, 1989, ch. 504, § 3, eff from and after passage (approved April 4, 1989).

§ 69-35-7. Activities under chapter not illegal or in restraint of trade.

No association, meeting or activity undertaken pursuant to the provisions of this act and intended to benefit all of the producers and handlers of milk and dairy products in Mississippi shall be deemed or considered illegal or in restraint of trade.

SOURCES: Laws, 1989, ch. 504, § 4, eff from and after passage (approved April 4, 1989).

§ 69-35-9. Dairy producers' referendum on levying milk assessment.

It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the state that, producers and handlers of milk and dairy products shall be permitted by referendum to be held among producers in the state and subject to the provisions of this act, to levy upon themselves an assessment on such milk produced in the state, for the purpose of financing or contributing towards the financing of a program of promotion and nutrition education designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and use for fluid milk and dairy products produced in the state and the United States. It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the state that the state ADA conduct the referendum in coordination with the extension service in accordance with the provisions of this act and the Federal Dairy Promotion Program codified in 7 U.S.C. 4501, et seq.

SOURCES: Laws, 1989, ch. 504, § 5, eff from and after passage (approved April 4, 1989).

§ 69-35-11. Procedures for holding referendum; ballots; maximum assessment.

(1) With respect to any referendum conducted under the provisions of this act, the state ADA and extension service shall, before calling and announcing such referendum, fix, determine and publicly announce at least thirty (30) days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the producers, and the general purposes to which said amount so collected shall be applied. No annual assessment levied under the provisions of this act shall exceed the federally mandated Fifteen Cents (15¢) per hundredweight of milk produced, however an amount not to exceed Ten Cents (10¢) per hundredweight of milk produced shall be credited to the State ADA for dairy product promotion or nutrition education programs.

(2) As an alternative method of conducting a referendum under the provisions of this act, the state ADA and extension service in its discretion may conduct the referendum by a mail ballot as herein provided. In the event that a decision is made to conduct a mail ballot, public notice of said mail ballot shall be made at least thirty (30) days before the date of said referendum. Said notice shall contain the same information required by subsection (1) of this section except that the notice will also state that the ballot is to be conducted by mail rather than at polling places. The notice shall also state that official ballots are being mailed on a date specified in the notice to all bulk tank units known by the state ADA and extension service to be eligible to vote and that any bulk tank unit not receiving by mail an official ballot by a date specified in the notice will have ten (10) days thereafter to apply for an official ballot at the office of the state ADA. The notice shall state the deadline for the receipt of all ballots and the address of the state ADA.

(3) Official ballots shall be prepared by the state ADA and extension service and mailed by first class mail to the last known address of all bulk tank units known to be eligible to vote. As announced in the public notice, said ballots shall be made available for a period of not less than ten (10) days, to those who are eligible to vote in said referendum and did not receive a ballot by mail.

(4) Before any bulk tank unit shall receive an official ballot, he shall furnish such proof as the state ADA and extension service may require of his

eligibility to vote in said referendum. The state ADA shall keep a list of those bulk tank units who receive official ballots. No bulk tank unit may receive more than one (1) official ballot unless the bulk tank unit proves to the satisfaction of the state ADA and extension service that the ballot has been lost or destroyed.

(5) No votes shall be counted which are not on official ballots. To be eligible to be counted, ballots must be received by the state ADA at the place and by the deadline previously announced in the public notice of said referendum.

SOURCES: Laws, 1989, ch. 504, § 6, eff from and after passage (approved April 4, 1989).

§ 69-35-13. Supervision of referendum; expense.

The arrangements for, management and supervision of any referendum conducted under the provisions of this act shall be under the direction of the state ADA in cooperation with the county extension agent of each county in the state, and any and all expenses in connection therewith shall be borne by the state ADA.

SOURCES: Laws, 1989, ch. 504, § 7, eff from and after passage (approved April 4, 1989).

§ 69-35-15. Referendum to be statewide; question to be submitted.

Any referendum conducted under the provisions of this act shall be held on a statewide basis. In such referendum, the bulk tank units eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of five (5) years in the amount set forth in the call for such referendum.

SOURCES: Laws, 1989, ch. 504, § 8, eff from and after passage (approved April 4, 1989).

§ 69-35-17. Majority vote rules.

If in such referendum called under the provisions of this act a simple majority of the bulk tank units eligible to participate and voting therein shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such milk referendum covered thereby, then such assessment shall be collected in the manner determined and announced by the state ADA.

SOURCES: Laws, 1989, ch. 504, § 9, eff from and after passage (approved April 4, 1989).

§ 69-35-19. Defeat of referendum; subsequent referendums.

In the event such referendum so to be conducted as herein provided shall not be supported by a majority of those eligible for participation and voting therein, then the state ADA and extension service conducting the said referendum shall have the full power and authority to call another referendum for the purposes herein set forth in the next succeeding year, on the question of an annual assessment for five (5) years.

SOURCES: Laws, 1989, ch. 504, § 10, eff from and after passage (approved April 4, 1989).

§ 69-35-21. Time, manner, and form of giving notice of referendum; contents of notice.

The hours, voting places, rules and regulations of the milk and dairy products, said referendum date, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published by the state ADA and extension service through the medium of the public press in the state at least thirty (30) days before the holding of such referendum, and direct written notice thereof shall likewise be given to all dairy-related organizations within the state and to each county extension agent and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this act.

SOURCES: Laws, 1989, ch. 504, § 11, eff from and after passage (approved April 4, 1989).

§ 69-35-23. Preparation and distribution of ballots; conduct of referendum; results.

The state ADA and extension service shall likewise prepare and distribute in advance of such referendum all necessary ballots for the purposes thereof, and shall, under rules and regulations promulgated, arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within ten (10) days thereafter shall canvas and publicly declare the result of such referendum.

SOURCES: Laws, 1989, ch. 504, § 12, eff from and after passage (approved April 4, 1989).

§ 69-35-25. Vote of cooperative associations.

(1) In conducting any referendum under this act, the state ADA and extension service shall consider the approval or disapproval by any cooperative association engaged in a bona fide manner in marketing milk or the dairy products as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers.

(2) In order to be eligible to vote in a referendum, a cooperative association must:

(a) Certify to the state ADA and extension service in conjunction with casting its ballot, that the association is organized under the provisions of the "Capper-Volstead Act" and that it is engaged in a bona fide manner in marketing its members' milk or dairy products;

(b) Certify to the state ADA and extension service in conjunction with casting its ballot, the number of bulk tank units on whose behalf the cooperative association is casting a ballot, that such bulk tank units are members of or under contract with the cooperative association and that the association was engaged during the representative period in marketing the milk of each of the bulk tank units for whom the cooperative association claims the right to vote;

(c) Furnish to the state ADA and extension service in conjunction with casting its ballot, a copy of the resolution authorizing the casting of the ballot;

(d) Certify to the state ADA and extension service in conjunction with casting its ballot, that the cooperative association has complied with the requirements of subsection (3) of this section; and

(e) Agree to make available to the state ADA and extension service necessary records and information pertaining to the representative period to validate the eligibility of the cooperative association to vote and to verify the number and identity of the producers on whose behalf the cooperative association claims the right to vote.

(3) Not later then thirty (30) days prior to the beginning of the referendum, each cooperative association shall notify the state ADA and extension service as to whether or not the association intends to vote on behalf of its bulk tank units.

SOURCES: Laws, 1989, ch. 504, § 13, eff from and after passage (approved April 4, 1989).

Cross References — Application of this section to definition of "Block voting", see § 69-35-5.

§ 69-35-27. Collection of assessment; failure to pay assessment.

(1) In the event a majority of the bulk tank units eligible for participation in such referendum and voting therein shall vote in favor of such assessment, then the said assessment shall be collected monthly for the number of years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules and regulations as may be determined by the state ADA conducting the same; and the said assessment so collected shall be paid into the treasury of the state ADA to be used together with other funds from other sources. Funds to be collected pursuant to a referendum conducted under this act shall be withheld and paid by each handler, including producer

handlers, to the state ADA by the last calendar day of the month succeeding the month in which the milk was received by the handler.

(2) In the event of a failure to pay part or all of an assessment levied pursuant to this act, the Attorney General of the state shall, upon the request of the state ADA, enforce the provisions of this act and collect such monies for payment to the state ADA. In the alternative to requesting the Attorney General to enforce the provisions of this act, the state ADA may bring a civil action to collect assessment from a handler failing to pay such assessments. A handler found to have failed to pay assessments pursuant to this act shall also be liable for reasonable attorney's fees and costs in the collection of such assessments.

SOURCES: Laws, 1989, ch. 504, § 14, eff from and after passage (approved April 4, 1989).

§ 69-35-29. Refund of assessments.

In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the regulations to be promulgated by the state ADA, any bulk tank unit upon and against whom such assessments shall have been levied and collected under the provisions of this act, if a bulk tank unit is dissatisfied with said assessment and the result thereof, such unit shall have the right to demand that the treasurer of the state ADA refund such assessment so collected from such bulk tank unit, provided such demand for refund is made in writing within thirty (30) days from the date on which said assessment is collected or due to be collected, whichever is earlier, from such bulk tank unit under the rules and regulations of the state ADA. Pursuant to the Dairy Promotion Stabilization Act of 1983, 7 U.S.C. Section 4510 et seq., any such funds shall be transferred to the National Dairy Board by the treasurer of the state ADA.

SOURCES: Laws, 1989, ch. 504, § 15, eff from and after passage (approved April 4, 1989).

§ 69-35-31. Report of amount of assessments received and collected.

In the event of the levying and collection of assessments as herein provided, the treasurer of the state ADA conducting same shall, within ninety (90) days after the end of any calendar year in which such assessments are collected, have available upon written request by a producer, or extension service or other agency of the state, a statement of the amount or amounts so received and collected by him under the provisions of this act.

SOURCES: Laws, 1989, ch. 504, § 16, eff from and after passage (approved April 4, 1989).

§ 69-35-33. Date of initial referendum.

The date of any initial referendums authorized under the provisions of this act shall be set on or before June 1, 1989.

SOURCES: Laws, 1989, ch. 504, § 17, eff from and after passage (approved April 4, 1989).

CHAPTER 36

Southern Dairy Compact

Sec.
69-36-1. [Effective when enacted into law by at least two other states within compact group and when consent of Congress obtained] Southern Dairy Compact; Mississippi's participation.
69-36-3. [Effective when enacted into law by at least two other states within compact group and when consent of Congress obtained] Mississippi compact delegation members; terms; vacancies; compensation.
69-36-5. [Effective when enacted into law by at least two other states within compact group and when consent of Congress obtained] Access to records and information.
69-36-7. [Effective when enacted into law by at least two other states within compact group and when consent of Congress obtained] Rules and regulations.
69-36-9. [Effective when enacted into law by at least two other states within compact group and when consent of Congress obtained] Penalties for violations.

§ 69-36-1. [Effective when enacted into law by at least two other states within compact group and when consent of Congress obtained] Southern Dairy Compact; Mississippi's participation.

The Southern Dairy Compact, the full text of which is hereinafter set forth and confirmed by the Mississippi Legislature, is hereby entered into on behalf of the State of Mississippi. The compact shall become effective when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained. The full text of said compact is as follows:

SOUTHERN DAIRY COMPACT

ARTICLE I. STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY

§ 1. Statement of purpose, findings and declaration of policy.

The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the commission is to take such steps as are necessary to assure the continued viability of dairy farming in the south, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is an essential agricultural activity of the South. Dairy farms, and associated suppliers, marketers, processors and retailers are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the federal order system nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the federal order system be discontinued. In that event, the interstate commission is authorized to regulate the marketplace in replacement of the order system. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in continuance of the order system.

By entering into this compact, the participating states affirm that their ability to regulate the price which southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

Recent, dramatic price fluctuations with a pronounced downward trend threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The federal order system, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

In today's regional dairy marketplace, cooperative rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperative may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION

§ 2. Definitions.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) "Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subdivision (b) of § 3 of this compact.

(2) "Commission" means the Southern Dairy Compact Commission established by this compact.

(3) "Commission marketing order" means regulations adopted by the commission pursuant to § 9 and § 10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission. Such order may establish minimum prices for any or all classes of milk.

(4) "Compact" means this interstate compact.

(5) "Compact over-order price" means a minimum price required to be paid to producers for Class I milk established by the commission in regulations adopted pursuant to § 9 and § 10 of this compact, which is above the price established in federal marketing orders or by state farm price regulations in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

(6) "Milk" means the lacteral secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the commission for regulatory purposes.

(7) "Partially regulated plant" means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

(8) "Participating state" means a state which has become a party to this compact by the enactment of concurring legislation.

(9) "Pool plant" means any milk plant located in a regulated area.

(10) "Region" means the territorial limits of the states which are parties to this compact.

(11) "Regulated area" means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

(12) "State dairy regulation" means any state regulation of dairy prices, and associated assessments, whether by statute, marketing order or otherwise.

§ 3. Rules of construction.

(a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(b) The compact shall be construed liberally in order to achieve the purposes and intent enunciated in § 1 of this compact. It is the intent of this compact to establish a basic structure by which the commission may achieve those purposes through the application, adaptation and development of the regulatory techniques historically associated with milk marketing and to afford the commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. COMMISSION ESTABLISHED

§ 4. Commission established.

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three (3) nor more than five (5) persons. Each delegation shall include at least one (1) dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one (1) consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in the appointing state. Delegation members shall serve no more than three (3) consecutive terms with no single term of more than four (4) years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the commission.

§ 5. Voting requirements.

All actions taken by the commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment or rescission of the commission's bylaws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to one (1) vote in the conduct of the commission's affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds (⅔) vote of the delegations present. The establishment of a regulated area which covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the commission's business.

§ 6. Administration and management.

(a) The commission shall elect annually from among the members of the participating state delegations a chairperson, a vice chairperson, and a treasurer. The commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the commission, and together with the treasurer, shall be bonded in an amount determined by the commission. The commission may establish through its bylaws an executive committee composed of one (1) member elected by each delegation.

(b) The commission shall adopt bylaws for the conduct of its business by a two-thirds (⅔) vote, and shall have the power by the same vote to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the Governor, both houses of the Legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

(1) To sue and be sued in any state or federal court;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes;

(4) To borrow money and issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the commission as security therefor, subject to the provisions of § 18 of this compact;

(5) To appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties and qualifications; and

(6) To create and abolish such offices, employments and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The commission may also retain personal services on a contract basis.

§ 7. Rulemaking power.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. POWERS OF THE COMMISSION

§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

The commission is hereby empowered to:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

(4) Prepare and release periodic reports on activities and results of the commission's efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling and for all other services performed with respect to milk.

(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

§ 9. Equitable farm prices.

(a) The powers granted in this section and § 10 of this compact shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article shall authorize the commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed One Dollar and Fifty Cents ($1.50) per gallon at Atlanta, Georgia; however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in 1990, and using that year as a base, the foregoing One Dollar and Fifty Cents ($1.50) per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The commission is hereby empowered to establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The commission is also empowered to establish a compact over-order price to be paid by all handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense, and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

(g) The commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The commission may reimburse other agencies for the reasonable cost of providing these services.

§ 10. Optional provisions for pricing order.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the commission, or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials and for competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers or uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

(A) With respect to regulations, establishing a compact over-order price, the commission may establish one (1) equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

(B) With respect to any commission marketing order, as defined in § 2, subdivision (3) of this compact, which replaces one or more terminated federal orders or state dairy regulations, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

(9) Provision requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to Article VII, § 18(a) of this compact.

(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. RULEMAKING PROCEDURE

§ 11. Rulemaking procedure.

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection 9(f) of this compact, or amendment thereof, as provided in Article IV, the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553). In addition, the commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

§ 12. Findings and referendum.

(a) In addition to the concise general statement of basis and purpose required by Section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553(c)), the commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV of this compact.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in § 13 of this compact.

§ 13. Producer referendum.

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection 9(f) of this compact, is approved by producers, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the commission. The terms and conditions of the proposed order or amendment shall be described by the commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the commission determines that it is approved by at least two-thirds (⅔) of the voting producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (1) hereof and subject to the provisions of subdivisions (2) through (5) hereof.

(1) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the commission.

(3) Any producer may obtain a ballot from the commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his approval or disapproval of the proposed order, shall notify the commission as to the name of the cooperative of which he or she is a member, and the commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to insure that all milk producers are informed regarding the proposed order, the commission shall notify all milk producers that an order is being considered and that each producer may register his approval or disapproval with the commission either directly or through his or her cooperative.

§ 14. Termination of over-order price or marketing order.

(a) The commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which is regulated by such order, but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof shall not be considered an order within the meaning of this article and shall require no hearing, but shall comply with the requirements for informal rulemaking prescribed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

ARTICLE VI. ENFORCEMENT

§ 15. Records; reports; access to premises.

(a) The commission may by rule and regulation prescribe recordkeeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the commission is authorized to examine the books and records of any regulated person relating to his or her milk business and for that purpose, the commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the commission. The commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (ii) the publication by direction of the commission of the name of any person violating any regulation of the commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than One Thousand Dollars ($1,000.00) or to imprisonment for not more than one (1) year, or to both, and shall be removed from office. The commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

§ 16. Subpoena; hearings and judicial review.

(a) The commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the commission stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within thirty (30) days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the commission by delivering to it a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the commission with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the commission from obtaining relief pursuant to § 17 of this compact. Any proceedings brought pursuant to § 17 of this compact, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

§ 17. Enforcement with respect to handlers.

(a) Any violation by a handler of the provisions of regulations establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the commission of any state or federal court of competent jurisdiction; or

(2) Referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

(c) With respect to handlers, the commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. FINANCE

§ 18. Finance of start-up and regular costs.

(a) To provide for its start-up costs, the commission may borrow money pursuant to its general power under § 6, subdivision (d), paragraph four (4) of this compact. In order to finance the costs of administration and enforcement of this compact, including payback of start-up costs, the commission is hereby empowered to collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one (1) year from the date the commission convenes, in an amount not to exceed $.015 per hundredweight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the commission's ongoing operating expenses.

(b) The commission shall not pledge the credit of any participating state or of the United States. Notes issued by the commission and all other financial obligations incurred by it shall be its sole responsibility and no participating state or the United States shall be liable therefor.

§ 19. Audit and accounts.

(a) The commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(b) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the commission.

(c) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VIII. ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL

§ 20. Entry into force; additional members.

The compact shall enter into force effective when enacted into law by any three (3) states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia and when the consent of Congress has been obtained.

§ 21. Withdrawal from compact.

Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after notice in writing of the withdrawal is given to the commission and the governors of all other participating states. No withdrawal shall affect any liability already incurred by or chargeable to a participating state prior to the time of such withdrawal.

§ 22. Severability.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three (3) or more compacting states. A compacting state may accept the conditions of Congress by implementation of this compact.

SOURCES: Laws, 1998, ch. 421, § 1, eff when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained.

Editor's Note — Laws, 1998, ch. 421, § 7 provides as follows:

"SECTION 7. This act shall take effect and be in force when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained."

Comparable Laws from other States — Alabama: Ala. Code § 2-13A-1.
Georgia: Ga. O.C.G.A. § 2-20-1 et seq.
Kentucky: Ky. Rev. Stat. Ann. § 260.670.
Missouri: Mo. Rev. Stat. § 262.700.
North Carolina: N.C. Gen. Stat. § 106-810.
Tennessee: Tenn. Code Ann. § 43-35-102 et seq.
Virginia: Va. Code Ann. § 3.2-3300.

§ 69-36-3. [Effective when enacted into law by at least two other states within compact group and when consent of Congress obtained] Mississippi compact delegation members; terms; vacancies; compensation.

(1) The Commissioner of Agriculture and Commerce shall appoint five (5) delegates from Mississippi to represent the state on the Southern Dairy Compact Commission, created and provided for in Article III of the Southern Dairy Compact. The delegates shall include one (1) dairy producer who is engaged in the production of milk at the time of appointment or reappointment, one (1) consumer representative, one (1) dairy processor, one (1) retail distributor and one (1) delegate at large. There shall be at least one (1) member appointed from each separate Supreme Court district in Mississippi.

(2) Each delegate shall serve for a term of four (4) years and shall serve diligently and conscientiously and shall strive to achieve the purposes of the Southern Dairy Compact.

(3) Each appointment shall be submitted to the Mississippi Senate for confirmation.

(4) Vacancies in delegate positions shall be filled in the same manner as the original appointments for the unexpired portion of the vacant delegate's position.

(5) The commissioner may provide funding as necessary to the delegation during its term.

SOURCES: Laws, 1998, ch. 421, § 2, eff when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained.

Editor's Note — Laws, 1998, ch. 421, § 7 provides as follows:

"SECTION 7. This act shall take effect and be in force when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained."

§ 69-36-5. [Effective when enacted into law by at least two other states within compact group and when consent of Congress obtained] Access to records and information.

The Commissioner of Agriculture and Commerce may, by lawful means, obtain information pertaining to the dairy industry which he deems necessary to carry out the purposes of the provisions of this chapter and the Southern Dairy Compact. Such information may be utilized by the commissioner, the delegates, and the Southern Dairy Compact Commission.

SOURCES: Laws, 1998, ch. 421, § 3, eff when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained.

Editor's Note — Laws, 1998, ch. 421, § 7 provides as follows:

"SECTION 7. This act shall take effect and be in force when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained."

§ 69-36-7. [Effective when enacted into law by at least two other states within compact group and when consent of Congress obtained] Rules and regulations.

The Commissioner of Agriculture and Commerce may adopt such rules and regulations, in accordance with the Mississippi Administrative Procedure Act, Section 25-43-1 et seq., Mississippi Code of 1972, as are necessary to carry out the purposes of this chapter and the Southern Dairy Compact.

SOURCES: Laws, 1998, ch. 421, § 4, eff when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained.

Editor's Note — Laws, 1998, ch. 421, § 7 provides as follows:
"SECTION 7. This act shall take effect and be in force when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained."

§ 69-36-9. [Effective when enacted into law by at least two other states within compact group and when consent of Congress obtained] Penalties for violations.

(1) No person shall violate this chapter, the Southern Dairy Compact, or any rules or regulations adopted pursuant to either this chapter or the compact.

(2) In addition to any other penalties provided by law, a civil penalty of One Thousand Dollars ($1,000.00) may be imposed for each violation, licenses may be revoked or suspended, or an additional penalty may be imposed in lieu of revocation or suspension.

(3) Each day on which a violation occurs shall be a separate violation.

SOURCES: Laws, 1998, ch. 421, § 5, eff when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained.

Editor's Note — Laws, 1998, ch. 421, § 7 provides as follows:
"SECTION 7. This act shall take effect and be in force when enacted into law by at least two (2) other states within the compact group of states and when the consent of Congress has been obtained."

CHAPTER 37

Mississippi Boll Weevil Management Act

Sec.
69-37-1. Short title.
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69-37-15. Certification of Mississippi Boll Weevil Management Corporation as official administrative and regulatory body; effect; revocation; debts of corporation not a liability of bureau or department.
69-37-17. Referenda, at request of corporation, as to assessments on cotton growers; character and disposition of funds assessed; Mississippi Boll Weevil Management Corporation Trust Fund [Paragraph (8)(b) repealed effective July 1, 2016].
69-37-19. Conduct of referenda; expenses.
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69-37-39. Boll Weevil Management Fund; deposits; disbursements.
69-37-41. Mississippi Boll Weevil Management Corporation to be certified as administering authority to plan and implement boll weevil management programs.

§ 69-37-1. Short title.

This chapter shall be known and may be cited as the “Mississippi Boll Weevil Management Act.”

SOURCES: Laws, 1993, ch. 345, § 1, eff from and after July 1, 1993.

§ 69-37-3. Purpose; liberal construction.

The Legislature has determined that the boll weevil is a public nuisance, a pest and a menace to the cotton industry. The purpose of this chapter is:

(a) To provide procedures through which cotton growers in the State of Mississippi may manage boll weevil suppression, pre-eradication or eradication programs and boll weevil containment/maintenance programs;

(b) To provide for certification of the Mississippi Boll Weevil Management Corporation to cooperate with state and federal agencies in the administration of cost-sharing programs for suppression, pre-eradication, eradication or post-eradication of boll weevils in Mississippi; and

(c) To empower the Mississippi Department of Agriculture and Commerce to promulgate and enforce regulations in support of those programs.
This chapter should be construed liberally to achieve these purposes.

SOURCES: Laws, 1993, ch. 345, § 2; Laws, 2010, ch. 524, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (a), substituted "in the State of Mississippi may manage boll weevil suppression, pre-eradication or eradication programs and boll weevil containment/maintenance programs" for "in various geographical regions in Mississippi may initiate boll weevil suppression, pre-eradication or eradication programs within their respective regions"; in (b), substituted "the Mississippi Boll Weevil Management Corporation" for "a cotton grower's organization," inserted "or post-eradication" and deleted "various cotton-growing regions in" preceding "Mississippi"; and made a stylistic change in (d).

ATTORNEY GENERAL OPINIONS

The Cotton Growers Organization may direct that both pro and con literature be attached to the ballots, but literature in favor of only one side of the issue may not be included. See Section 69-37-19. Foster, January 25, 1996, A.G. Op. #96-0037.

RESEARCH REFERENCES

CJS. 3 C.J.S., Agriculture § 9.

§ 69-37-5. Definitions.

As used in this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Assessment" means the amount per acre to be charged each cotton grower to finance, in whole or part, a boll weevil suppression, pre-eradication, eradication or post-eradication program in this state. The assessments shall be based on scientifically sound data regarding the level of boll weevil infestation in the state and the anticipated cost of conducting the proposed program.

(b) "Board" means the Board of Directors of the Mississippi Boll Weevil Management Corporation.

(c) "Boll weevil" means Anthonomus grandis Boheman in any stage of development.

(d) "Mississippi Boll Weevil Management Corporation Board of Directors" means the statewide administrative board elected by all Mississippi cotton growers who are members of a local cotton growers association to serve and represent the interests and concerns of Mississippi cotton growers with respect to the administration of boll weevil management programs and the nonvoting advisory members as provided in Section 69-7-13.

(e) "Bureau" means the Bureau of Plant Industry within the regulatory office of the Mississippi Department of Agriculture and Commerce.

(f) "Certificate" means a document issued or authorized by the Bureau of Plant Industry indicating that a regulated article is not contaminated with boll weevils.

(g) "Cotton growers association" means a local association with membership open to all Mississippi cotton growers. Cotton growers associations represent the interests and concerns of Mississippi cotton growers to the Mississippi Boll Weevil Management Corporation.

(h) "Commissioner" means the Commissioner of Agriculture and Commerce.

(i) "Containment/maintenance program" means a statewide program designed to monitor the level of boll weevil infestations to eliminate any reinfestation of boll weevils.

(j) "Corporation" means the Mississippi Boll Weevil Management Corporation.

(k) "Cotton" means any cotton plant or cotton plant products upon which the boll weevil is dependent for completion of any portion of its life cycle.

(*l*) "Cotton grower" means any person who under the rules and regulations of the United States Department of Agriculture is actively engaged in cotton farming.

(m) "Department" means the Mississippi Department of Agriculture and Commerce.

(n) "Eradication program" means any statewide program designed to eliminate, contain and monitor the boll weevil as an economic pest within a specified area.

(o) "Host" means any plant or plant product upon which the boll weevil is dependent for completion of any portion of its life cycle.

(p) "Infested" means actually infested with a boll weevil or so exposed to infestation that it would be considered infested according to criteria established by program management and the Mississippi Boll Weevil Management Corporation.

(q) "Information gathering program" means any statewide program designed to gather information that will be used in administering a boll weevil management program.

(r) "Management program" means any statewide program designed to suppress or eradicate, contain and monitor the boll weevil or to gather information that will be used in planning or implementing such suppression or eradication programs.

(s) "Permit" means a document issued or authorized by the Bureau of Plant Industry to provide for the movement of regulated articles to restricted designations for limited handling, utilization or processing.

(t) "Person" means any individual, partnership, corporation, company, society, association or other business entity.

(u) "Pest" means any species of plant, animal, or microbe that adversely affects cotton production; including, but not limited to: insects, weeds, nematodes, bacteria, fungi, and viruses.

(v) "Post-eradication program" means any unified program designed to maintain boll weevil free status in the program area.

(w) "Pre-eradication program" means any statewide program designed to reduce overall boll weevil populations before entering a full scale eradication program.

(x) "Region" means a specific cotton growing area within the state as defined by the Technical Advisory Committee as those regions existed before July 1, 2010, defined based on similarities in boll weevil populations, cotton cultural practices, national topography and climate.

(y) "Regulated article" means any article of any character carrying or capable of carrying the boll weevil, including cotton plants, seed cotton, cottonseed, other hosts, gin trash, gin equipment, mechanical cotton pickers and other equipment associated with cotton production, harvesting or processing.

(z) "Suppression" means any statewide program designed to reduce overall boll weevil populations throughout the specified area.

(aa) "Technical Advisory Committee" means a group of professional scientists in the fields of entomology, agronomy, agricultural economics and other appropriate disciplines appointed by the Boll Weevil Management Board to provide technical guidance in developing and conducting effective boll weevil management programs.

SOURCES: Laws, 1993, ch. 345, § 3; Laws, 2010, ch. 524, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section.

§ 69-37-7. Authorization for programs to suppress or eradicate boll weevil; cooperation with other agencies or persons.

The commissioner, with the approval of the corporation, is authorized to carry out programs to suppress or eradicate the boll weevil in this state through suppression, pre-eradication, post-eradication, or containment/maintenance programs. The commissioner is authorized to cooperate with any agency of any state or the federal government, any other agency in this state, any person engaged in growing, processing, marketing, or handling cotton, or any group of those persons in this state in programs to effectuate the purposes of this chapter and may enter into written agreements to effectuate those purposes. The agreements may provide for cost sharing and for division of duties and responsibilities under this chapter and may include other provisions generally to effectuate the purposes of this chapter.

SOURCES: Laws, 1993, ch. 345, § 4; Laws, 2010, ch. 524, § 4, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in the first sentence, substituted "corporation" for "board of the Certified Cotton Growers Organization" and added "through suppression, pre-eradication, post-eradication, or containment/maintenance programs"; and made minor stylistic changes.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS. 3 C.J.S., Agriculture §§ 98 et seq.

§ 69-37-9. Entry upon premises to carry out provisions of chapter; monitoring, inspection, treatment with pesticides, and other activities; notice to owner; warrant.

The commissioner and the corporation or their authorized agent(s), after first notifying the owner, shall have authority to enter cotton fields, cotton processing facilities and other premises in order to carry out survey, suppression or eradication activities, including treatment with pesticides and monitoring of growing cotton or other host plants as may be necessary to carry out the provisions of this chapter. The commissioner and the corporation or their authorized agent(s) shall have authority to make inspection of any fields or premises in this state and any property located therein for the purpose of determining whether such property is infested with the boll weevil and for determining the extent of infestation. Such inspection and other activities may be conducted in a reasonable manner without a warrant at any reasonable time. Any judge of this state may, within his or her jurisdiction and upon proper cause shown, issue a warrant giving the commissioner the right of entry to any premises for the purpose of carrying out the provisions of this section or other activities authorized by this chapter.

SOURCES: Laws, 1993, ch. 345, § 5; Laws, 2010, ch. 524, § 5, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in the first and second sentences, inserted "and the corporation" and substituted "their authorized agent(s)" for "his authorized agent(s)."

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 38, 40, 42, 44.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1-3 (Petition or application by District Attorney for removal or destruction of infested crops as public nuisance; order to show cause why such should not be destroyed; order for same).

CJS. 3 C.J.S., Agriculture §§ 98 et seq.

§ 69-37-11. All persons growing cotton to furnish information to commissioner and corporation.

Every person growing cotton in this state shall furnish to the commissioner and the corporation on forms supplied by the commissioner such information as the commissioner may require concerning the size and location of all commercial cotton fields and of noncommercial plantings of cotton grown as an ornamental plant or for any other purposes.

SOURCES: Laws, 1993, ch. 345, § 6; Laws, 2010, ch. 524, § 6, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment inserted “and the corporation.”

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

§ 69-37-13. Bureau may certify Mississippi Boll Weevil Management Corporation for purpose of entering into agreements to effectuate purposes of chapter; eligibility for certification; corporation board of directors.

(1) The Mississippi Boll Weevil Management Corporation, upon certification by the bureau, may enter into agreements with the State of Mississippi, other states, the federal government and other parties as may be necessary to carry out the purposes of this chapter.

(2) In order to be eligible for certification by the bureau, the corporation must demonstrate to the satisfaction of the bureau that:

(a) It is a nonprofit organization and could qualify for tax-exempt status under Section 501(a) of the Internal Revenue Code of 1954 [26 USC 501(a)];

(b) Its purpose is for the representation of cotton growers associations that are open to all cotton growers in this state; and

(c) It has only one (1) class of voting members with each member entitled to only one (1) vote.

(3) The corporation's board of directors shall be composed of members who shall be chosen according to bylaws established by the corporation. Two (2)

members elected from each of the five (5) original cotton growers regions as those regions existed before July 1, 2010, shall serve as voting members.

(4) There shall be six (6) nonvoting advisory members as follows:

(a) The Commissioner of Agriculture and Commerce, who shall serve in a nonvoting advisory capacity only, or his or her designee;

(b) The Vice President of the College of Agriculture and Life Sciences at Mississippi State University, who shall serve in a nonvoting advisory capacity only, or his or her designee;

(c) The Vice President of the School of Agriculture, Research, Extension and Applied Sciences at Alcorn State University, who shall serve in a nonvoting advisory capacity only, or his or her designee;

(d) The President of the Mississippi Farm Bureau Federation, who shall serve in a nonvoting advisory capacity only, or his or her designee; and

(e) The Chairmen of the Senate and House Agriculture Committees, who shall serve in nonvoting advisory capacities only.

(5) All books and records of account and minutes of proceedings of the board shall be available for inspection or audit by the commissioner at any reasonable time.

(6) Employees or agents of the board who handle funds of the board shall be adequately bonded in an amount to be determined by the commissioner.

SOURCES: Laws, 1993, ch. 345, § 7; Laws, 2010, ch. 524, § 7, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (1), substituted "The Mississippi Boll Weevil Management Corporation, upon certification by the bureau, may enter into agreements" for "The bureau may certify a cotton growers organization for the purpose of entering into agreements"; in the introductory paragraph in (2), substituted "corporation" for "cotton growers association"; in (2)(a), substituted "for tax-exempt status" for "as a tax-exempt organization"; rewrote (2)(b), which formerly read: "Membership in the organization is open to all cotton growers in this state"; made a stylistic change in (2)(c); in (3), twice substituted "corporation" for "organization," or similar language, and added the last sentence; added present (4) and redesignated the remaining subsections accordingly; and in (5) and (6), substituted "board" for "organization"; and in (6), substituted the first occurrence of "board" for "grower's organization."

§ 69-37-15. Certification of Mississippi Boll Weevil Management Corporation as official administrative and regulatory body; effect; revocation; debts of corporation not a liability of bureau or department.

Upon determination by the bureau that the Mississippi Boll Weevil Management Corporation meets the requirements of Section 69-37-13, the bureau shall certify the corporation as the official administrative and regulatory body for all Mississippi cotton growers who are members of a cotton growers association as defined in Section 69-37-5. The certification shall be for the purposes of this chapter only and shall not affect other organizations or associations of cotton growers established for other purposes.

The bureau shall certify only one (1) corporation and may revoke the certification of the corporation if at any time the corporation fails to meet the requirements of this chapter. The debts of the corporation, if there are any, shall not become the liability of the bureau or the department.

SOURCES: Laws, 1993, ch. 345, § 8; Laws, 2010, ch. 524, § 8, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in the first paragraph, in the first sentence, substituted "Mississippi Boll Weevil Management Corporation" and "corporation" for "organization" and added the language beginning "administrative and regulatory body for all Mississippi cotton growers" through to the end, and made a stylistic change in the last sentence; and throughout the last paragraph, substituted "corporation" for "organization" and made stylistic changes.

§ 69-37-17. Referenda, at request of corporation, as to assessments on cotton growers; character and disposition of funds assessed; Mississippi Boll Weevil Management Corporation Trust Fund [Paragraph (8)(b) repealed effective July 1, 2016].

(1) At the request of the corporation, the bureau shall authorize a statewide referendum among all Mississippi cotton growers on the question of whether an assessment, not to exceed One Dollar ($1.00) per acre, shall be levied upon all cotton producers to offset, in whole or in part, the cost of maintaining the corporation, conducting referenda, and/or conducting a program to collect data and information on boll weevil populations and control costs. Any assessments levied for data-collecting programs as a result of the referendum shall be in addition to assessments being collected to support any other boll weevil management programs in the state.

(2) At the request of the corporation, the bureau shall authorize a statewide referendum among all Mississippi cotton growers on the question of whether an assessment, not to exceed Twelve Dollars ($12.00) per acre, shall be levied upon all cotton growers to offset, in whole or in part, the cost of managing boll weevil suppression, pre-eradication, eradication, or post-eradication programs authorized by this chapter or by any other law of this state. The programs shall be designed on a statewide basis.

(3) The assessment levied under this chapter shall be based upon the level of boll weevil infestation and the anticipated cost of conducting the proposed program, as determined by available scientific data, and the number of acres of cotton planted in the specified management zone. The maximum amount of the assessment, the period of time for which it shall be levied, how it shall be levied, and when it shall be paid shall be determined by the bureau and the board and established by regulations according to this section. The maximum amount of the assessment, the period of time for which it will be levied, and when the payment is due shall appear on all ballots for the referenda authorized by subsections (1) and (2) of this section.

(4) All cotton growers having membership in a local cotton growers association shall be entitled to vote in any referendum authorized by subsections (1) and (2) of this section, and the bureau, after consultation with the corporation, shall determine any questions of eligibility to vote. A cotton grower must be growing cotton within this state and be a member of a local cotton growers association in order to be eligible to vote in elections and referenda concerning boll weevil management practices.

(5) Each eligible cotton grower shall be mailed a ballot upon which to cast a vote for or against the boll weevil suppression, pre-eradication, eradication or post-eradication program.

(6) Passage of a referendum under subsection (1) or (2) of this section shall require that at least twenty percent (20%) of the registered cotton growers vote in the referendum and that a majority of those voting statewide approve the referendum.

(7)(a) The assessments collected by the department under this chapter shall be promptly remitted to the State Treasury on behalf of the corporation in the special fund established in paragraph (b) of this subsection to be held in trust for the use and benefit of the corporation in administering the designated boll weevil management program through the suppression, pre-eradication, eradication or post-eradication of boll weevils.

(b) There is created within the State Treasury a special fund to be designated the "Mississippi Boll Weevil Management Corporation Trust Fund" into which shall be deposited all the revenues collected by the department for assessments levied under the provisions of this section. Monies in the fund shall be disbursed upon warrants issued by the State Fiscal Officer upon requisitions signed by the corporation's board. Monies in the fund shall remain inviolate and any unexpended amounts remaining in the fund at the end of the fiscal year, and any interest earned thereon, shall be divested to the corporation.

(8)(a) The corporation shall provide to the department an annual audit of its accounts performed by a certified public accountant.

(b)(i) The corporation shall provide the annual audit no later than November 15 for the preceding calendar year.

(ii) This paragraph (b) shall stand repealed on July 1, 2016.

(9) The assessments collected by the department under this chapter shall not be considered as "state" funds.

(10) Upon completion or termination of a program, any unused funds shall be transferred to and deposited in the Boll Weevil Management Fund created under Section 69-37-39, for the purpose of being used if there is a future occurrence of a boll weevil outbreak in the state.

SOURCES: Laws, 1993, ch. 345, § 9; Laws, 2010, ch. 524, § 9; Laws, 2012, ch. 453, § 1, eff from and after passage (approved Apr. 19, 2012.)

Joint Legislative Committee Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, "under this chapter" was substituted for "under this act" in (7)(a).

Amendment Notes — The 2010 amendment rewrote the section.

The 2012 amendment extended the repealer for paragraph (8)(b) by substituting "July 1, 2016" for "July 1, 2012."

ATTORNEY GENERAL OPINIONS

The amount of any one assessment cannot exceed $40 per acre as provided in Section 69-37-17 for suppression, pre-eradication or eradication programs. However, it is up to regulations established by the Commissioner of Agriculture to determine for what period of time the assessment shall be levied, how it shall be levied and when it shall be paid. Foster, January 25, 1996, A.G. Op. #96-0037.

Section 69-37-17 appears to contemplate that individual cotton growers shall only be liable for assessments, penalties and fees as provided in the statute. The Certified Cotton Growers Organization could be liable for its debts. All employees and agents of the Organization who handle funds must be adequately bonded. Foster, January 25, 1996, A.G. Op. #96-0037.

Under Section 69-37-17, the bureau may limit those eligible to vote to those who are actually growing cotton, i.e. farmers, and may limit the assessment to those eligible voters. Foster, January 25, 1996, A.G. Op. #96-0037.

Under Section 69-37-17, assessment is made on a per acre basis. The same assessment for each acre cannot be payable twice; for example, by both the farmer and the landlord who owns the land and has a lien on the growing cotton. Foster, January 25, 1996, A.G. Op. #96-0037.

Based on the Section 69-37-21 and 69-37-17(5), in order for the program to continue fifty percent of the voting cotton growers must vote and two-thirds of those voting must vote for continuing with the program. If less than fifty percent of the registered cotton growers in the affected area do not vote then the referendum would not pass and the program would not continue. Moody, February 16, 1996, A.G. Op. #96-0052.

Any language that goes beyond the question to be voted upon or beyond the information required to be included by Section 69-37-17 should not appear on the ballot. Foster, February 22, 1996, A.G. Op. #96-0112.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 9.

§ 69-37-19. Conduct of referenda; expenses.

The arrangements for and management of any referendum held under this chapter shall be under the direction of the Mississippi Boll Weevil Management Corporation. The corporation shall bear all expenses incurred in conducting the referendum, to include furnishing the ballots and arranging for the necessary poll holders.

SOURCES: Laws, 1993, ch. 345, § 10; Laws, 2010, ch. 524, § 10, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "Mississippi Boll Weevil Management Corporation" for "Certified Cotton Growers Organization" in the first sentence and "corporation" for "organization" in the last sentence.

ATTORNEY GENERAL OPINIONS

The Cotton Growers Organization may direct that both pro and con literature be attached to the ballots, but literature in favor of only one side of the issue may not be included. See Section 69-37-3. Foster, January 25, 1996, A.G. Op. #96-0037.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 9.

§ 69-37-21. Subsequent referenda; annual report; limitation on assessment of fees.

(1) If any referendum conducted under this chapter fails to receive the required number of affirmative votes, the bureau, at the request of the corporation, shall be authorized to call other referenda.

(2) After the passage of any referendum, the eligible voters may be allowed, by subsequent referenda to be held upon recommendation of the corporation, to vote on whether to continue with the program and/or to modify the assessment fee. However, before any referendum is held proposing any modifications of the assessment, the corporation must submit its recommendation to the commissioner for approval. Upon petition by twenty percent (20%) of all eligible voting cotton growers within the state, the corporation shall be required to conduct a subsequent referendum on the question called in the petition, provided that the corporation is required to hold no more than one (1) petitioned referendum during any given calendar year. All the requirements for an initial referendum must be met in any subsequent referenda. The results of the referendum, along with annual audits of all monies expended on programs affected by the referendum, shall be reported each year to the Lieutenant Governor, the Speaker of the House of Representatives and the Chairmen of the Senate Agriculture Committee and the House of Representatives Agriculture Committee.

(3) It is the intent of the Legislature that the cost of the containment/maintenance phase of the boll weevil eradication program be borne by the producers, and that any subsequent debt incurred by the program be funded by subsidies, loans and grants from the federal government and other sources.

(4) No assessment under any subsequent referendum for a containment/maintenance program may exceed Twelve Dollars ($12.00) an acre, and it shall be incumbent upon the Mississippi Boll Weevil Management Corporation to levy only that amount necessary to ensure the financial stability of the eradication program.

SOURCES: Laws, 1993, ch. 345, § 11; Laws, 2001, ch. 487, § 1; Laws, 2010, ch. 524, § 11, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (1), substituted "at the request of the corporation, shall be authorized" for "with the consent of the Certified Cotton Growers Organization, may be authorized" and made a stylistic change; and in (2), in the first sentence, substituted "may be allowed" for "shall be allowed" and "corporation" for "certified growers committee," and deleted "at least every ten (10) years or" following "to be held," added the second sentence, in the third sentence, substituted "all eligible voting cotton growers within the state" for "the voting cotton growers within a designated region," twice substituted "corporation" for "Certified Cotton Growers Organization" and deleted "for each designated management region" following the second occurrence of "referendum"; and in the fourth sentence, substituted "The results of the referendum" for "The results of each referendum"; and in (4), inserted "Mississippi."

ATTORNEY GENERAL OPINIONS

Based on Section 69-37-21(2), in a subsequent referendum, two thirds of the voters must vote in favor of continuing the program in order for it to continue. Foster, January 25, 1996, A.G. Op. #96-0037.

Based on Sections 69-37-21 and 69-37-17(5), in order for the program to continue fifty percent of the voting cotton growers must vote and two-thirds of those voting must vote for continuing with the program. If less than fifty percent of the registered cotton growers in the affected area do not vote then the referendum would not pass and the program would not continue. Moody, February 16, 1996, A.G. Op. #96-0052.

A claim by some farmers against others based on detrimental reliance would not appear plausible since Section 69-37-21 specifically contemplates a subsequent referendum on whether to continue with the program. Spell, February 23, 1996, A.G. Op. #96-0082.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 9.

§ 69-37-23. Liens to secure payment of assessments and penalties; destruction of untreatable commercial cotton as nuisance; compensation.

(1) For statewide management when assessments are established by passage of a referendum, the commissioner shall have a lien for payment of the assessments, together with any penalties levied under this chapter, against all cotton grown by each cotton grower who grows cotton within the state. This lien shall be of equal dignity with liens for taxes in favor of the state and the commissioner is authorized to issue executions for the collection of the assessments and liens described in this section in like manner as executions are issued for ad valorem property taxes due the state.

(2) In addition, the commissioner shall have a special lien on cotton for payment of assessments, together with any penalties levied under this chapter, which shall be superior to any other lien provided by law, shall arise as of the time the assessments become due and payable, and shall cover all cotton grown by the cotton grower from the date the lien arises until the assessments are paid. However, any buyer of cotton shall take free of the lien if the buyer has not received written notice of the lien from the commissioner, or if he has paid for the cotton by a check in which the department is named as joint payee.

(3) A cotton grower who fails to pay when due and upon reasonable notice any assessment levied under this chapter shall be subject to a per acre penalty as established in the bureau's regulations, in addition to the assessment.

(4) Commercial cotton that is located in sites that cannot be treated adequately because of health, environmental or other concerns shall be deemed to be a public nuisance and shall be destroyed promptly. The commissioner, with the consent of the corporation and the approval of the Attorney General, may apply to the circuit court of the judicial circuit in which the public nuisance is located to have the nuisance condemned and destroyed. This injunctive relief shall be available to the commissioner notwithstanding the existence of any other legal remedy and the commissioner shall not be required to file a bond.

In those cases where commercial cotton is destroyed because of prevented treatment due to health or environmental concerns, the owner of the cotton shall be compensated for that portion of the crop that is destroyed. The per acre amount of the payments shall be based on a reasonable estimate of the value of the crop as determined by the commissioner in consultation with the corporation and the affected producer. Payments for those losses shall be funded by assessment fees paid by cotton growers and administered by the corporation.

SOURCES: Laws, 1993, ch. 345, § 12; Laws, 2010, ch. 524, § 12, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (1), in the first sentence, substituted "For statewide management when assessments are established" for "In management areas where assessments are established" and "state" for "area," and in the last sentence, substituted "the assessments and liens described in this section" for "such assessments"; in (4), substituted "corporation" for "Certified Cotton Growers Organization"; in (5), twice substituted "corporation" for "Certified Cotton Growers Organization" and deleted "within the designated region" following "fees paid by cotton growers"; and made numerous stylistic changes.

ATTORNEY GENERAL OPINIONS

Section 75-9-310(a) pertaining to the filing of financing statements does not apply to the state's lien on farmers' cotton for boll weevil assessments. Tagert, Mar. 28, 2003, A.G. Op. #03-0132.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 9, 13, 38 et seq.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1-3 (Petition or application by District Attorney for removal or destruction of infested crops as public nuisance; order to show cause why such should not be destroyed; order for same); 58 (Complaint, declaration or petition — damages for destruction of crop — negligence in spraying cotton).

CJS. 3 C.J.S., Agriculture §§ 98 et seq.

§ 69-37-25. Quarantine, and control of movement of articles from infested areas in other states, by regulation of Bureau of Plant Industry.

The Bureau of Plant Industry is authorized to promulgate regulations quarantining this state, or any portion thereof, and governing the storage, treatment, or other handling in the quarantined areas of regulated articles and the movement of regulated articles into or from such areas. The bureau shall determine when such action is necessary, or appears reasonably necessary, to prevent or retard the spread of the boll weevil. The bureau is also authorized to promulgate regulations governing the movement of regulated articles from other states or portions thereof into this state when such state is known to be infested with the boll weevil. The promulgation of these regulations shall conform in all aspects to the Mississippi Administrative Procedures Law, Sections 25-43-1 et seq., Mississippi Code of 1972, and sound principles of quarantines.

SOURCES: Laws, 1993, ch. 345, § 13, eff from and after July 1, 1993.

Cross References — Bureau of Plant Industry, see § 69-25-1.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am Jur. 3 Am. Jur. 2d, Agriculture § 41.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1-3 (Petition or application by District Attorney for removal or destruction of infested crops as public nuisance; order to show cause why such should not be destroyed; order for same).

CJS. 3 C.J.S., Agriculture § 98.

§ 69-37-27. Suppression, pre-eradication, eradication and no-growth zones; growers to share costs; notice, referenda, penalties, and appeal of penalties.

The bureau, with the concurrence of the corporation, is authorized to designate by regulation one or more areas of this state as "suppression zones," "pre-eradication zones" or "eradication zones" where the specified boll weevil management programs will be undertaken. The bureau, with the concurrence of the corporation, is authorized to promulgate reasonable regulations regarding areas where cotton cannot be planted within a specified management zone when there is reason to believe that growing cotton in those areas will jeopardize the success of the program or present a hazard to public health or safety. The bureau, with the concurrence of the corporation, is authorized to issue regulations prohibiting the planting of noncommercial cotton in the management zones and requiring that all growers of commercial cotton in these zones participate in the specified boll weevil management program and share equitably in the cost. The costs shall be determined by available scientific data on the basis of the level of boll weevil infestation and the anticipated costs of the program in the various regions and shall be approved via referendum by cotton growers within the affected area under procedures set forth in this chapter. Notice of the prohibition and requirement shall be given by publication for one (1) day each week for three (3) successive weeks in a newspaper having general circulation in the affected area. The bureau, with the concurrence of the corporation, is authorized to set by regulation a reasonable schedule of penalty fees to be assessed when growers in designated "management zones" do not meet the requirements of regulations issued by the bureau with respect to reporting of acreage and participation in cost-sharing as prescribed by regulation. The penalty fees shall not exceed a charge of One Hundred Dollars ($100.00) per acre. The cotton grower charged with those penalties has the right to appeal this decision to the corporation.

SOURCES: Laws, 1993, ch. 345, § 14; Laws, 2010, ch. 524, § 13, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment thrice inserted "with the concurrence of the corporation"; in the first sentence, deleted "provided, however, that cotton growers within each designated zone approve such programs by referendum in their respective regions under procedures set forth herein" from the end; in the second sentence, substituted "corporation" for "Certified Cotton Growers Organization"; in the fourth sentence, substituted "determined by available scientific data" for "determined by the Technical Advisory Committee of the Certified Cotton Growers Organization" and "in this chapter" for "herein"; in the last sentence, substituted "corporation" for "state Certified Cotton Growers Organization"; and made numerous stylistic changes.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 9, 13, 38 et seq.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1-3 (Petition or application by District Attorney for removal or destruction of infested crops as public nuisance; order to show cause why such should not be destroyed; order for same).

CJS. 3 C.J.S., Agriculture §§ 98 et seq.

§ 69-37-29. Destruction or treatment of cotton in eradication zones; compensation.

The commissioner, with the concurrence of the corporation, is authorized to destroy, or cause to be treated with pesticides, volunteer or other noncommercial cotton and to establish procedures for the purchase and destruction of commercial cotton in eradication zones when the commissioner deems the action necessary to effectuate the purposes of this chapter. No payment shall be made by the commissioner to the owner or lessee for the destruction or injury of any cotton that was planted in an eradication zone after publication of notice as provided in this chapter, or was otherwise handled in violation of this chapter or the regulations adopted under this chapter. However, the commissioner shall pay for losses resulting from the destruction of cotton that was planted in those zones before promulgation of the notice. Payments for those losses shall be funded by assessment fees paid by cotton growers and administered by the corporation.

SOURCES: Laws, 1993, ch. 345, § 15; Laws, 2010, ch. 524, § 14, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in the first sentence, substituted "The commissioner, with the concurrence of the corporation, is authorized to destroy" for "The commissioner shall have authority to destroy"; in the last sentence, deleted "within the designated region" following "fees paid by cotton growers" and substituted "corporation" for "Certified Cotton Growers Organization"; and made numerous stylistic changes.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 59, 60.

8 Am. Jur. Pl & Pr Forms (Rev), Crops, Forms 1-3 (Petition or application by District Attorney for removal or destruction of infested crops as public nuisance; order to show cause why such should not be destroyed; order for same); 58 (Complaint, declaration or petition — damages for destruction of crop — negligence in spraying cotton).

CJS. 3 C.J.S., Agriculture § 98.

§ 69-37-31. Regulations pertaining to livestock pasturage, human entry, honeybee colonies, and other activities affecting boll weevil control programs.

(1) The bureau, with the concurrence of the corporation, is authorized to promulgate reasonable regulations restricting the pasturage of livestock, entry by persons, location of honeybee colonies or other activities affecting the boll weevil eradication program in affected areas, for limited periods of time, which have been or will be treated with pesticides or otherwise treated to cause the eradication of the boll weevil, or in any other areas that may be affected by those treatments.

(2) The bureau shall also have authority to adopt any other rules and regulations as it deems necessary to further effectuate the purposes of this chapter, provided that those other rules and regulations are approved by the corporation.

SOURCES: Laws, 1993, ch. 345, § 16; Laws, 2010, ch. 524, § 15, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (1), inserted "with the concurrence of the corporation"; and in (2), substituted "corporation" for "Board of Directors of the Certified Cotton Growers Organization" and deleted the last sentence, which read: "In no event, however, shall the rules and regulations promulgated by the bureau and the board of the Certified Cotton Growers Organization apply to any region which, through referenda provided for herein, has not approved participation in any eradication, pre-eradication, suppression, or information-gathering program"; and made stylistic changes.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS. 3 C.J.S., Agriculture §§ 98, 102, 103.

§ 69-37-33. Penalties for violations.

(1) Any person who shall violate any of the provisions of this chapter or the regulations promulgated hereunder, or who shall alter, forge or counterfeit or use without authority any certificate or permit or other document provided for in this chapter or in the regulations promulgated hereunder shall be guilty of a misdemeanor.

(2) Any person who, except in compliance with the regulations of the bureau, shall move any regulated article into this state from any other state, which the bureau found in such regulations is infested by the boll weevil, shall be guilty of a misdemeanor.

SOURCES: Laws, 1993, ch. 345, § 17, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS. 3 C.J.S., Agriculture § 101.

§ 69-37-35. Exemptions from assessment penalties for financial hardship; payment plan.

The commissioner, with the consent of the corporation, is authorized to exempt from the assessment penalty requirements set forth in this chapter those cotton growers for whom paying the assessment penalties would impose an undue financial hardship, and the commissioner is authorized to establish, upon the recommendation of the corporation, a payment plan in those hardship cases. This exemption shall be implemented as follows:

(a) The commissioner, with the consent of the corporation, shall adopt rules and regulations defining the criteria to be used in determining financial hardship. However, no exemption shall be granted to any cotton grower who, after the amount of assessments and penalties otherwise due has been subtracted from his taxable net income, has a net income exceeding Fifteen Thousand Dollars ($15,000.00) for the year in which he seeks an exemption;

(b) Any cotton grower who claims an exemption shall apply on a form prescribed by the commissioner. A separate application shall be filed for each calendar year in which a cotton grower claims an exemption. Each application shall contain an explanation of the conditions to be met for approval. An oath shall be included on the form that upon completion shall be returned to the commissioner;

(c) The commissioner shall forward all completed exemption application forms to the corporation. The corporation shall determine from the information contained in the application forms whether or not the applicants qualify for a hardship exemption (exemption from penalty) and may recommend a payment plan to the commissioner; and

(d) The corporation shall notify the commissioner of its determination, which shall be binding upon the applicants. Upon receipt of the determination of the corporation, the commissioner shall promptly notify each affected cotton grower of that determination. If an exemption has been denied, assessments and penalties for the year in which the application was made shall become due at the time they would otherwise have become due had no application for exemption been filed or within thirty (30) days after the date of the commissioner's notice of an adverse determination, whichever is later.

SOURCES: Laws, 1993, ch. 345, § 18; Laws, 2010, ch. 524, § 16, eff from and after July 1, 2010.

Joint Legislative Committee Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in the introductory paragraph was corrected by substituting "this chapter" for "this article."

Amendment Notes — The 2010 amendment substituted "corporation" for "Certified Cotton Growers Organization" throughout the section; in the last sentence in (c), substituted "corporation" for "growers organization"; and made stylistic changes.

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 9, 38 et seq.

CJS. 3 C.J.S., Agriculture § 101.

§ 69-37-37. Extension of chapter to other cotton pests upon recommendation of the corporation.

This chapter shall be extended to include all other cotton pest species upon recommendation of the corporation.

SOURCES: Laws, 1993, ch. 345, § 19; Laws, 1997, ch. 308, § 1; Laws, 2010, ch. 524, § 17, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "corporation" for "Certified Cotton Growers Organization."

RESEARCH REFERENCES

ALR. Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection. 70 A.L.R.2d 852.

Am Jur. 3 Am. Jur. 2d, Agriculture §§ 38 et seq.

CJS. 3 C.J.S., Agriculture § 98.

§ 69-37-39. Boll Weevil Management Fund; deposits; disbursements.

There is created within the State Treasury a special fund to be designated the "Boll Weevil Management Fund" into which shall be deposited all the revenues required to be deposited into the fund under Section 27-65-75(14). Money deposited into the fund shall not lapse at the end of any fiscal year and investment earning on the proceeds in the special fund shall be deposited into the fund. Money from the fund shall be disbursed therefrom upon warrants issued by the State Fiscal Officer upon requisitions signed by the Commissioner of Agriculture and Commerce to assist the Mississippi Boll Weevil Management Corporation in carrying out its duties under the Mississippi Boll Weevil Management Act (Section 69-37-1 et seq.). The commissioner shall disburse all of the money the department receives from the fund to the Mississippi Boll Weevil Management Corporation, as defined in Section 69-37-5, for the exclusive purpose of reducing the per acre grower assessments.

SOURCES: Laws, 1998, ch. 584, § 1; Laws, 2010, ch. 524, § 18, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "Mississippi Boll Weevil Management Corporation" for "Department of Agriculture and Commerce" in the next-to-last sentence, and rewrote the last sentence, which formerly read: "The Commissioner of Agriculture and Commerce may disburse all or any portion of the money the Department of Agriculture and Commerce receives from the fund to the Certified Cotton Growers Organization, as defined in Section 69-37-5, Mississippi Code of 1972, to assist such organization in carrying out its duties under the Mississippi Boll Weevil Management Act"; and made numerous stylistic changes.

Cross References — Avails of sales tax derived from sales by cotton compresses or cotton warehouses that would otherwise be deposited into the General Fund to be deposited into the Boll Weevil Management Fund until such time that the total amount deposited into the fund during a fiscal year equals $1,000,000.00, see § 27-65-75.

§ 69-37-41. Mississippi Boll Weevil Management Corporation to be certified as administering authority to plan and implement boll weevil management programs.

From and after July 1, 2010, the Mississippi Boll Weevil Management Corporation shall be certified by the Bureau of Plant Industry as the administering authority to plan and implement boll weevil management programs in this state, and all records, duties, responsibilities, assets, contractual rights and obligations relating to the administration, planning and implementation of boll weevil management programs in this state shall be under the jurisdiction of the corporation upon certification by the bureau. If for any reason the corporation fails to meet the criteria established in Sections 69-37-1 through 69-37-39, the bureau may certify an alternate cotton grower's association to serve as administrative authority of boll weevil management programs.

SOURCES: Laws, 2010, ch. 524, § 1, eff from and after July 1, 2010.

CHAPTER 39

Agricultural Liming Materials

Sec.
69-39-1. Short title; administration of chapter.
69-39-3. Definitions.
69-39-5. Labeling requirements; posting at bulk delivery sites.
69-39-7. Sale of liming materials not in compliance with chapter, or toxic to plants or animals, prohibited.
69-39-9. Sale and distribution permit required; applications.
69-39-11. Annual registration of liming products.
69-39-13. Inspection and testing of liming materials; samples; procedures; distribution of results.
69-39-15. Issuance of stop sale or use order for products sold in violation of chapter; release from order.
69-39-17. Penalties for violations of chapter; warnings.
69-39-19. Promulgation of rules and regulations.
69-39-21. Repealed.

§ 69-39-1. Short title; administration of chapter.

This chapter shall be known and may be cited as "The Mississippi Agricultural Liming Materials Act of 1993." This chapter shall be administered by the Commissioner of Agriculture and Commerce of the State of Mississippi herein referred to as the "commissioner."

SOURCES: Laws, 1993, ch. 581, § 1, eff from and after July 1, 1993; reenacted without change, Laws, 2009, ch. 330, § 1, eff from and after July 1, 2009.

Editor's Note — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-3. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Agricultural liming materials" means products containing calcium and magnesium compounds that are capable of neutralizing soil acidity.

(b) "Limestone" means a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

(c) "Calcitic limestone" means a calcareous rock composed wholly or largely of calcium carbonate.

(d) "Dolomitic limestone" means a calcareous rock composed of calcium and magnesium carbonates with a minimum elemental magnesium (Mg) content of six percent (6%).

(e) "Burnt lime" means a material made from limestone that consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

(f) "Hydrated lime" means a material, made from burnt lime, that consists of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide and/or magnesium hydroxide.

(g) "Marl" or "chalk" means a granular or loosely consolidated earthy material composed largely of sea shell fragments and calcium carbonate.

(h) "Ground shells" means a product obtained by the grinding of shells of mollusks and that shall carry the name of mollusk origin.

(i) "Industrial by-product" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

(j) "Brand" means the term, designation, trademark, product name or other specific designation under which individual agricultural liming material is offered for sale.

(k) "Fineness" means the percentage by weight of the material that will pass United States Standard sieves of specified sizes. The commissioner shall promulgate regulations relating to fineness.

(*l*) "Ton" means 2,000 pounds avoirdupois.

(m) "Percent" or "percentage" means by weight.

(n) "Bulk" means in nonpackaged form.

(o) "Label" or "labeling" means all written, printed or graphic matter upon or accompanying any agricultural liming material or advertisements, brochures, posters, television and radio announcements used in promoting the sale of such agricultural liming material.

(p) "Commissioner" means the Commissioner of Agriculture and Commerce of the State of Mississippi, or his agents and employees.

(q) "Person" means any individual, partnership, corporation, association or other legal entity or organization.

(r) "Calcium carbonate equivalent" means the acid neutralizing capacity of an agricultural liming material expressed as weight percentage of calcium carbonate.

(s) "Weight" means the weight of undried material as offered for sale.

SOURCES: Laws, 1993, ch. 581, § 2, eff from and after July 1, 1993; reenacted without change, Laws, 2009, ch. 330, § 2, eff from and after July 1, 2009.

Editor's Note — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-5. Labeling requirements; posting at bulk delivery sites.

(1) All agricultural liming materials sold, offered or exposed for sale to any person in this state shall have affixed to each package in a conspicuous manner on the outside thereof, a plainly printed, stamped or otherwise marked label, tag or statement or in the case of bulk sales, a final invoice or bill of sale, setting forth at least the following information:

(a) The name and principal office address of the manufacturer or distributor;

(b) The brand or trade name of the material;

(c) The identification of the product as to the type of the agricultural liming material;

(d) The net weight of the agricultural liming material;

(e) The minimum percentage of calcium oxide and magnesium oxide and/or calcium carbonate and magnesium carbonate;

(f) The minimum guaranteed content of elemental magnesium (Mg) if claimed;

(g) The minimum guaranteed content of available potassium (K20) and/or phosphorous (P205) if claimed;

(h) Calcium carbonate equivalent as determined by methods prescribed by the Association of Official Analytical Chemists. Minimum calcium carbonate equivalents shall be as prescribed by regulation;

(i) The minimum percent by weight passing through United States Standard sieves as prescribed by regulations.

(2) In the case where agricultural liming materials are sold by a distributor or retailer, the manufacturer (mining company) of such material shall be responsible for furnishing the distributor or retailer with the information or statement required in this section in order for such distributor or retailer to forward the information or statement to the customer.

(3) No information or statement shall appear on any package label, delivery slip or advertising matter that is false or misleading to the purchaser as to the quality, analysis type or composition of the agricultural liming material.

(4) In the case of any material that has been adulterated subsequent to packaging, labeling or loading thereof and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by the vendor to the package or delivery slip to identify the kind and degree of such adulteration therein.

(5) At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the statement required by this section for each brand of material.

(6) When the commissioner determines that the requirement for expressing the calcium and magnesium in elemental form would not impose an economic hardship on distributors and users of agricultural liming materials by reason of conflicting label requirements among the states, he may require by regulation thereafter that the minimum percentage of calcium oxide and magnesium oxide and/or calcium carbonate and magnesium carbonate shall be expressed in the following form:

Total Calcium (Ca) ....________ percent
Total Magnesium (Mg) ....________ percent

Provided, however, that the effective date of said regulation shall be not less than six (6) months following the issuance thereof.

SOURCES: Laws, 1993, ch. 581, § 3; reenacted without change, Laws, 2009, ch. 330, § 3, eff from and after July 1, 2009.

Editor's Note — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-7. Sale of liming materials not in compliance with chapter, or toxic to plants or animals, prohibited.

(1) No agricultural liming material shall be sold or offered for sale in this state unless it complies with provisions of this chapter and regulations pertaining thereto.

(2) No agricultural liming material shall be sold or offered for sale in this state that contains toxic materials in quantities injurious to plants or animals.

SOURCES: Laws, 1993, ch. 581, § 4, eff from and after July 1, 1993; reenacted without change, Laws, 2009, ch. 330, § 4, eff from and after July 1, 2009.

Editor's Note — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-9. Sale and distribution permit required; applications.

Every manufacturer or distributor who sells, offers for sale, exposes for sale, distributes or solicits orders for sale of any agricultural liming material to a distributor, retailer or farmer in the State of Mississippi, before selling or offering such agricultural liming material for sale or distributing or soliciting orders for sale shall secure a permit from the commissioner to engage in such business. Permit applications for each office or place of business in the State of Mississippi of such manufacturer or distributor shall be submitted upon forms prescribed by the commissioner. Such permit applications shall contain the name and address of the manufacturer or distributor and such other information as may be required by the commissioner for the effective enforcement of the provisions of this chapter and rules and regulations which may be adopted under Section 69-39-13.

SOURCES: Laws, 1993, ch. 581, § 5; reenacted without change, Laws, 2009, ch. 330, § 5, eff from and after July 1, 2009.

Editor's Note — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-11. Annual registration of liming products.

(1) Each separately identified product shall be registered once each year before being distributed in this state. The application for registration shall be submitted to the commissioner on forms furnished or approved by him. Upon

approval by the commissioner, a copy of the registration shall be furnished to the applicant.

(2) A distributor shall not be required to register any brand of agricultural liming material that is already registered under this chapter by another person, providing the label does not differ in any respect.

SOURCES: Laws, 1993, ch. 581, § 6; reenacted without change, Laws, 2009, ch. 330, § 6, eff from and after July 1, 2009.

Editor's Note — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-13. Inspection and testing of liming materials; samples; procedures; distribution of results.

(1) It shall be the duty of the commissioner who may act through his authorized agent, to sample, inspect and submit to the State Chemist for analysis or test agricultural liming materials distributed within this state as he may deem necessary to determine whether such agricultural liming materials are in compliance with the provisions of this chapter. The commissioner, individually or through his agent, is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to agricultural liming material subject to the provisions of this chapter and regulations adopted pursuant thereto and to the records relating to the distribution of such materials.

(2) All samples of agricultural liming material drawn by the commissioner or his designated agent as official samples shall be forwarded to the State Chemist for analysis or test. The State Chemist shall perform all necessary analyses and tests and furnish the commissioner with an official laboratory report of his findings or determinations at no cost to the commissioner for such analyses, tests or reports.

(3) The methods of analysis and sampling shall be those approved by the commissioner and the State Chemist, and shall be guided by the Association of Official Analytical Chemists (AOAC) procedures.

(4) The results of official analyses of agricultural liming materials and portions of official samples shall be distributed by the State Chemist as provided by regulations adopted pursuant to this chapter at least annually.

SOURCES: Laws, 1993, ch. 581, § 7; reenacted without change, Laws, 2009, ch. 330, § 7, eff from and after July 1, 2009.

Editor's Note — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-15. Issuance of stop sale or use order for products sold in violation of chapter; release from order.

The commissioner may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of agricultural liming material and to hold at a designated place when the commissioner finds such agricultural liming material is being offered or exposed for sale in violation of any of the provisions of this chapter or regulations adopted pursuant thereto until the law has been complied with and the agricultural liming material is released in writing by the commissioner or the violation has been otherwise legally disposed of by written authority. The commissioner shall release the agricultural liming material so withdrawn when the requirements of the provisions of this chapter or regulations adopted pursuant thereto have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

SOURCES: Laws, 1993, ch. 581, § 8; reenacted without change, Laws, 2009, ch. 330, § 8, eff from and after July 1, 2009.

Editor's Note — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-17. Penalties for violations of chapter; warnings.

(1) If upon official laboratory analysis, any agricultural liming material sold in this state is found to be below the labeled guarantee for calcium carbonate equivalent, neutralizing value, magnesium, available phosphorous, available potassium or above the labeled guarantee for moisture content or screening standards (fineness) as provided under terms of this chapter or regulations adopted hereunder, the commissioner shall impose a civil penalty as provided by regulation for the effective administration and enforcement of this chapter. Such civil penalty shall be assessed to the manufacturer/packer for packaged material and to the final seller holding a permit issued under terms of this chapter for material sold in bulk.

(2) When the commissioner determines that a person has violated terms of this chapter, other than subsection (1) of this section, depending upon the gravity of the offense, he shall assess a civil penalty in an amount not less than Two Hundred Dollars ($200.00) and not more than One Thousand Dollars ($1,000.00).

(3) All civil penalties assessed as provided herein shall be paid to the commissioner within thirty (30) days from the date of assessment. Penalties which are not paid in full within the prescribed thirty (30) days shall be considered delinquent and an additional penalty of ten percent (10%) of the balance due shall be added to the assessed penalty for each month such penalty continues to be delinquent.

(4) The commissioner is authorized to apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or

regulation promulgated hereunder notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(5) Any person required by this chapter to obtain a permit from the commissioner before engaging in business, who shall engage in such business without having first obtained such license or shall engage in such business after such license shall have expired or shall have been revoked by the commissioner, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Three Hundred Dollars ($300.00) and not more than Five Hundred Dollars ($500.00). Each day in violation shall constitute a separate offense.

(6) Nothing in this chapter shall be construed as requiring the commissioner or his representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when he believes that the public interests are best served by a suitable notice or warning in writing.

SOURCES: Laws, 1993, ch. 581, § 9, eff from and after July 1, 1993; reenacted without change, Laws, 2009, ch. 330, § 9, eff from and after July 1, 2009.

Editor's Note — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-19. Promulgation of rules and regulations.

The commissioner may, with the approval of the Attorney General as provided in Section 69-1-25, promulgate such rules and regulations in accordance with the Mississippi Administrative Procedures Law as may be necessary for the effective enforcement of this chapter. The regulations shall have the full force and effect of law.

SOURCES: Laws, 1993, ch. 581, § 10; Laws, 2005, ch. 397, § 1; Laws, 2005, ch. 451, § 1; reenacted without change, Laws, 2009, ch. 330, § 10, eff from and after July 1, 2009.

Editor's Note — Former § 69-39-21, which provided for the repeal of this section, was repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

Joint Legislative Committee Note — Section 1 of ch. 397 Laws, 2005, effective from and after July 1, 2005 (approved March 16, 2005), amended this section. Section 1 of ch. 451, Laws, 2005, effective from and after July 1, 2005 (approved March 29, 2005), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 451, Laws, 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

§ 69-39-21. Repealed.

Repealed by Laws of 2009, ch. 330, § 11, effective July 1, 2009.

§ 69-39-21. [Laws, 2005, ch. 397, § 2, Laws, 2005, ch. 451, § 2, eff from and after July 1, 2005.]

Editor's Note — Former § 69-39-21 provided for the repeal of §§ 69-39-1 through 69-39-19.

CHAPTER 41

Mississippi Agribusiness Council Act of 1993

Sec.
69-41-1. Short title.
69-41-3. Mississippi Agribusiness Council created; purpose.
69-41-5. Composition of council; co-participation with other persons and organizations; authorization of contracts and agreements; per diem, mileage and other expenses.
69-41-7. Executive director; qualifications; compensation; duties; staff.
69-41-9. Duties and responsibilities of council.
69-41-11. Council authorized to establish rules.
69-41-13. Authorization to accept and expend monies and in-kind contributions; Agribusiness Council Contribution Fund.
69-41-15 and 69-41-17. Repealed.
69-41-19. Agriculture Development Committee.

§ 69-41-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Agribusiness Council Act of 1993."

SOURCES: Laws, 1993, ch. 619, § 1; reenacted without change, Laws, 1998, ch. 536, § 1, eff from and after passage (approved April 9, 1998).

§ 69-41-3. Mississippi Agribusiness Council created; purpose.

There is created a special joint committee of the Legislature to be known as the Mississippi Agribusiness Council, hereinafter referred to as "the council," for the purposes of stimulating the development of new markets for Mississippi agricultural products and industry.

SOURCES: Laws, 1993, ch. 619, § 2; reenacted without change, Laws, 1998, ch. 536, § 2, eff from and after passage (approved April 9, 1998).

§ 69-41-5. Composition of council; co-participation with other persons and organizations; authorization of contracts and agreements; per diem, mileage and other expenses.

(1) The council shall be composed of the following members:

(a) The Chairman and Vice-Chairman of the Senate Agriculture Committee and five (5) additional members of the Senate, no more than two (2) members from one (1) congressional district. Upon recommendation by the Chairman of the Senate Agriculture Committee, the Lieutenant Governor shall appoint such five (5) additional members.

(b) The Chairman and Vice-Chairman of the House of Representatives Agriculture Committee and five (5) additional members of the House, no more than two (2) members from one (1) congressional district. Upon recommendation by the Chairman of the House of Representatives Agriculture Committee, the Speaker shall appoint such five (5) additional members.

(2) The Chairman of the Senate Agriculture Committee and the Chairman of the House of Representatives Agriculture Committee shall serve as Co-Chairmen of the council.

(3) In conducting the studies and formulating the recommendations required of it, the council may elicit the support of and participation by any commercial, industrial, governmental, agricultural, minority and public interest organizations or associations, or individual members thereof, and any federal, state and local agencies and political subdivisions as may be necessary, or appropriate in the furtherance of the activities of the council.

(4) In addition, the council shall be authorized to contract or enter into agreements with other agencies or private research centers that it may deem necessary to carry out its duties and functions.

(5) For attending meetings of the council, each legislative member shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session. However, no per diem and expenses shall be paid for attending meetings of the council while the Legislature is in session, and no per diem and expenses shall be paid without prior approval of the proper committee in the member's respective house. However, per diem and travel expenses incurred by members of the council which are not incurred for the purpose of attending regular council meetings may be paid out of funds appropriated to the Mississippi Agribusiness Council in the amount provided by Sections 5-1-45 and 25-3-41, Mississippi Code of 1972.

SOURCES: Laws, 1993, ch. 619, § 3; Laws, 1997, ch. 589, § 1; reenacted and amended, Laws, 1998, ch. 536, § 3, eff from and after passage (approved April 9, 1998).

§ 69-41-7. Executive director; qualifications; compensation; duties; staff.

The council may appoint a nonstate service executive director, herein called director, who shall be competent and qualified in the area of marketing and agriculture and who may receive as compensation for services an annual salary as set by the council, but not to exceed the annual salary of the Commissioner of Agriculture and Commerce. The director shall be the one-point information contact on agricultural production, management and marketing issues and shall be charged with the duty of knowing the role and responsible personnel in each agency on matters related to agriculture. The director, or a staff member as designated by the council, shall be directly responsible to the council for tasks assigned in the administration and implementation of programs developed by the council. The council may also employ such nonstate staff as necessary to perform the objectives of the council, whose salary shall be set by the council but not to exceed an amount recommended by the State Personnel Board.

SOURCES: Laws, 1993, ch. 619, § 4; Laws, 1997, ch. 589, § 2; reenacted and amended, Laws, 1998, ch. 536, § 4, eff from and after passage (approved April 9, 1998).

§ 69-41-9. Duties and responsibilities of council.

The duties and responsibilities of the council shall be the following:

(1) To conduct national and international market research to identify trade and investment opportunities;

(2) To identify joint ventures and licensing services;

(3) To conduct market studies to identify agricultural products that can be manufactured in Mississippi from materials and resources available in or to Mississippi for which a profitable and growing market exists;

(4) To recommend legislation to assist with financial packaging by utilizing all available fund resources provided by the State of Mississippi including, but not limited to, the Small Business Investment Act, Emerging Crop Fund and the Business Financial Investment Act;

(5) To establish a Mississippi Register of Mississippi Agricultural Producers for public policymaking purposes, and set criteria for listing therein;

(6) To recommend purchasing agreements between state institutions and Mississippi agricultural producers which shall not include suggested prices;

(7) To recommend the enactment of legislation organizing the state into marketing districts for the most effective and efficient use of marketing resources;

(8) To provide any other assistance and services necessary to accomplish the purposes of this chapter.

SOURCES: Laws, 1993, ch. 619, § 5; reenacted and amended, Laws, 1998, ch. 536, § 5, eff from and after passage (approved April 9, 1998).

Cross References — Emerging Crop Fund, see §§ 69-2-13 et seq.

§ 69-41-11. Council authorized to establish rules.

The council is authorized and empowered to promulgate rules required to carry out the provisions of this chapter.

SOURCES: Laws, 1993, ch. 619, § 6; reenacted and amended, Laws, 1998, ch. 536, § 6, eff from and after passage (approved April 9, 1998).

§ 69-41-13. Authorization to accept and expend monies and in-kind contributions; Agribusiness Council Contribution Fund.

The Mississippi Agribusiness Council is authorized and empowered to accept and expend monetary or in-kind contributions, gifts and grants to carry out the provisions of this chapter. Such contributions, gifts and grants shall be deposited into a special fund, hereby established in the State Treasury, to be known as the "Agribusiness Council Contribution Fund."

SOURCES: Laws, 1993, ch. 619, § 7; reenacted without change, Laws, 1998, ch. 536, § 7, eff from and after passage (approved April 9, 1998).

§§ 69-41-15 and 69-41-17. Repealed.

Repealed by Laws of 1998, ch. 536, § 11, eff from and after passage (approved April 9, 1998).

§ 69-41-15. [Laws, 1993, ch. 619, § 8; Laws, 1997, ch. 589, § 3, eff from and after July 1, 1997]

§ 69-41-17. [Laws, 1993, ch. 619, § 10, eff by operation of law upon passage (approved April 20, 1993)]

Editor's Note — Former § 69-41-15 created the Agribusiness Advisory Committee and provided for membership and payment of expenses.

Former § 69-41-17 provided for a deferred repealed of Sections 69-41-1 through 69-1-15 on July 1, 1998.

§ 69-41-19. Agriculture Development Committee.

The Agriculture Development Committee is created and shall be composed of agriculture business leaders and farmers as are appointed by the Mississippi Agribusiness Council; one (1) of the members shall be a representative of Mississippi State University, and one (1) shall be a representative of Alcorn State University. The Development Committee shall work with the Mississippi Agribusiness Council in carrying out its duties and purposes. Members of the Development Committee shall serve without compensation.

SOURCES: Laws, 1997, ch. 589, § 4, eff from and after July 1, 1997.

CHAPTER 42

Program to Encourage Growth in Mississippi Agribusiness Industry

Sec.
69-42-1. Definitions; development and implementation of program; purpose of program; annual report.

§ 69-42-1. Definitions; development and implementation of program; purpose of program; annual report.

(1) For the purposes of this section, the following words shall have the meanings ascribed in this section unless the context otherwise requires:

(a) "Agribusiness" means any agricultural, aquacultural, horticultural, manufacturing, research and development or processing enterprise or enterprises.

(b) "Farmer" means a resident of Mississippi who engages or wishes to engage in the commercial production of crops on land in Mississippi. The term shall include individuals, partnerships and corporations.

(2) The Mississippi Development Authority shall develop and implement a program to stimulate growth in the agricultural industry for agribusiness concerns and farmers.

(3) The program developed and implemented by the Mississippi Development Authority under this section shall:

(a) Increase the availability of financial assistance available to agribusiness concerns and farmers;

(b) Provide incentives for agribusiness concerns and farmers which will encourage growth in the Mississippi agricultural industry;

(c) Assist new agribusiness concerns and farmers in developing and implementing business plans;

(d) Develop methods for increasing markets for the goods and services of agribusiness concerns and farmers;

(e) Work with public and private entities in disseminating information about public and private programs that benefit agribusiness concerns and farmers; and

(f) Identify sources of financial assistance available to agribusiness concerns and farmers and assist agribusiness concerns and farmers with the preparation of applications for assistance from public and private sources.

(3)(a) The Mississippi Development Authority shall file an annual report with the Governor, the Secretary of the Senate and the Clerk of the House of Representatives not later than December 1 of each year, regarding the impact of the program created under this section on the agribusiness industry in Mississippi.

(b) The Mississippi Development Authority shall file an annual report with the Governor, the Secretary of the Senate and the Clerk of the House of Representatives not later than December 1 of each year, with recommendations for any legislation necessary to accomplish the purposes of this section.

SOURCES: Laws, 2000, 2nd Ex Sess, ch. 1, § 52, eff from and after passage (approved Aug. 30, 2000.)

Editor's Note — Laws, 2000, 2nd Ex Sess, ch. 1, § 1 provides:
"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

CHAPTER 43

Mississippi Ratite Council and Promotion Board

Sec.
69-43-1 through 69-43-11. [Repealed]
69-43-13. Repeal date of Sections 69-43-1 through 69-43-11.

§§ 69-43-1 through 69-43-11. Repealed.

Repealed by Laws of 2004, ch. 383, § 7, eff from and after July 1, 2006.

§ 69-43-1. [Laws, 1997, ch. 375, § 1, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 1; reenacted without change, Laws, 2004, ch. 383, § 1, eff from and after July 1, 2004.]

§ 69-43-3. [Laws, 1997, ch. 375, § 2, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 2; reenacted without change, Laws, 2004, ch. 383, § 2, eff from and after July 1, 2004.]

§ 69-43-5. [Laws, 1997, ch. 375, § 3, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 3; reenacted without change, Laws, 2004, ch. 383, § 3, eff from and after July 1, 2004.]

§ 69-43-7. [Laws, 1997, ch. 375, § 4, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 4; reenacted without change, Laws, 2004, ch. 383, § 4, eff from and after July 1, 2004.]

§ 69-43-9. [Laws, 1997, ch. 375, § 5, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 5; reenacted without change, Laws, 2004, ch. 383, § 5, eff from and after July 1, 2004.]

§ 69-43-11. [Laws, 1997, ch. 375, § 6, eff from and after passage (approved March 18, 1997); reenacted without change, Laws, 2000, ch. 331, § 6; reenacted without change, Laws, 2004, ch. 383, § 6, eff from and after July 1, 2004.]

Editor's Note — Former §§ 69-43-1 through 69-43-11 related to the Mississippi Ratite Council and Promotion Board.

For repeal date of this section, see § 69-43-13.

Cross References — For a definition of "ratite," see § 75-33-3(1)(g).

§ 69-43-13. Repeal date of Sections 69-43-1 through 69-43-11.

Sections 69-43-1 through 69-43-11, shall stand repealed on July 1, 2006.

SOURCES: Laws, 1997, ch. 375, § 7; Laws, 2000, ch. 331, § 7; Laws, 2004, ch. 383, § 7, eff from and after July 1, 2004.

CHAPTER 44

Mississippi Corn Promotion Board

Sec.
69-44-1. Purpose.
69-44-3. Mississippi Corn Promotion Board; membership; organization and administration; officers.
69-44-5. Assessment on corn grown in state; corn promotion fund; records and reports.
69-44-7. Penalties; exemption.
69-44-9. Expenditure of funds; annual report of income and expenditures; penalty for failure to report.
69-44-11. State Tax Commission to assist department in collecting assessments.
69-44-13. Provisions to be controlling.
69-44-15. Commissioner authorized to audit Corn Promotion Board; information to be included in audit; injunction for violations of chapter.

§ 69-44-1. Purpose.

The purpose of this chapter is to promote the growth and development of the corn industry in Mississippi by research, advertisement promotions and education and market development, thereby promoting the general welfare of the people of this state.

For purposes of this chapter:

(a) "Board" means the Mississippi Corn Promotion Board.

(b) "Department" means the Mississippi Department of Agriculture and Commerce.

SOURCES: Laws, 2006, ch. 512, § 1; brought forward without change, Laws, 2009, ch. 393, § 17, eff from and after July 1, 2009.

ATTORNEY GENERAL OPINIONS

The Department of Agriculture and Commerce may withhold 3.5% of the gross amount collected each month from assessments on corn sales and, with the approval of the Mississippi Corn Promotion Board, may "settle up" with the Board at the end of the fiscal year. Spell, February 2, 2007, A.G. Op. #07-00019, 2007 Miss. AG LEXIS 11.

There is no provision in Miss. Code Ann. § 69-44-1 et seq., addressing the interest earned on funds in the Mississippi Corn Promotion Fund. Absent a specific provision otherwise, interest earned on funds in the Mississippi Corn Promotion Fund must be credited to the State General Fund. Spell, February 2, 2007, A.G. Op. #07-00019, 2007 Miss. AG LEXIS 11.

§ 69-44-3. Mississippi Corn Promotion Board; membership; organization and administration; officers.

(1) The Mississippi Corn Promotion Board is hereby created, to be composed of twelve (12) members to be appointed by the Governor to serve terms of three (3) years. All of the twelve (12) members of the board shall be producers of corn in the State of Mississippi. Within ten (10) days following the effective date of this chapter, the Mississippi Farm Bureau Federation, Inc.,

the Mississippi Feed and Grains Association, the Mississippi Corn Growers Association and the Delta Council shall each submit the names of six (6) corn producers to the Governor, and he shall appoint three (3) members from the nominees of each organization to serve on the board on rotating three-year terms. The original board shall be appointed with members of each of the organizations appointed as follows: one (1) for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. Each year thereafter, not less than thirty (30) days prior to the expiration of the terms of expiring board members, the organizations shall submit the names of three (3) nominees to the Governor and succeeding boards shall be appointed by the Governor in the same manner, giving equal representation to each organization. Vacancies which occur shall be filled in the same manner as the original appointments were made.

(2) The members of the board shall meet and organize immediately after their appointment, and shall elect a chairman, vice chairman and secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by such officers or specifically designated by the board. The chairman, vice chairman and secretary-treasurer shall be bonded in an amount not less than Twenty Thousand Dollars ($20,000.00). The cost of the bonds shall be paid from the funds received under this chapter. The bond shall be a security for any illegal act of such member of the board and recovery thereon may be had by the state for any injury by the illegal act of the member. The board may establish rules and regulations for its own government and the administration of the affairs of the board.

SOURCES: Laws, 2006, ch. 512, § 2; brought forward without change, Laws, 2009, ch. 393, § 18, eff from and after July 1, 2009.

§ 69-44-5. Assessment on corn grown in state; corn promotion fund; records and reports.

(1) After July 1, 2006, there is imposed and levied an assessment at the rate of One Cent (1¢) per bushel on all corn grown within the State of Mississippi, and the assessment shall be deducted by the purchaser from the amount paid the producer at the first point of sale, whether within or without the state. If a producer pledges corn grown by that producer as collateral for a loan issued by the Commodity Credit Corporation and if that producer forfeits the corn in lieu of loan repayment, the Commodity Credit Corporation shall, at the time of the loan settlement, collect the assessment from the producer.

(2) The assessment imposed and levied by this section shall be payable to and collected by the department from the purchaser of the corn at the first point of sale or from the Commodity Credit Corporation as provided in subsection (1) of this section. The proceeds of the assessment collected by the department shall be deposited with the State Treasurer in a special fund to be established as the "Mississippi Corn Promotion Fund," and promptly remitted to a foundation under the terms and conditions as the board deems necessary to ensure that the assessments are used properly in carrying out the purposes of this chapter.

(3) The department shall submit to the board a budget detailing and justifying the administrative costs of the department in administering the provisions of this chapter. The budget must be approved by the board by April 1 of each year. The department shall pay over to the Mississippi Corn Promotion Fund the funds collected, less three and one-half percent (3-½%) of the gross amount collected. The amount withheld by the department must be approved by the board by July 1 of each year.

(4) Each purchaser or the Commodity Credit Corporation shall keep a complete and accurate record of all corn handled by him and shall furnish each producer with a signed sales slip showing the number of bushels purchased from him and the amount deducted by him for the Mississippi Corn Promotion Fund. The records shall be in the form and contain any other information as the department shall by rule or regulation prescribe. The records shall be preserved by the purchaser for a period of two (2) years and shall be offered for inspection at any time upon oral or written demand by the department or any duly authorized agent or representative thereof. Every purchaser or the Commodity Credit Corporation, at such time or times as the department may require, shall submit reports or other documentary information deemed necessary for the efficient and equitable collection of the assessment imposed in this chapter. The department shall have the power to cause any duly authorized agent or representative to enter upon the premises of any purchaser of corn and examine or cause to be examined by the agent only books, papers and records which deal in any way with the payment of the assessment or enforcement of the provisions of this chapter.

SOURCES: Laws, 2006, ch. 512, § 3; brought forward without change, Laws, 2009, ch. 393, § 19, eff from and after July 1, 2009.

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The term "foundation," as used in Miss. Code Ann. § 69-44-5, is not synonymous with, but may utilize services of, a bank or a banking institution's trust department. A foundation, as contemplated in the statute, would include a corporation or other similar entity organized and operated for the purposes set forth in that chapter, that is, to conduct a program of research, education and advertising designed to promote the corn industry in Mississippi. Spell, February 2, 2007, A.G. Op. #07-00019, 2007 Miss. AG LEXIS 11.

§ 69-44-7. Penalties; exemption.

(1) Any purchaser who fails to file a report or to pay any assessment within the time required by the department shall forfeit to the department a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) of the amount for each month of delay or fraction thereof after the first month after the report was required to be filed or the assessment became due. The penalty shall be paid to the department and shall be disposed of by it in the same manner as funds derived from the payment of the assessment imposed herein.

(2) The department shall collect the penalties levied herein, together with the delinquent assessment, by any or all of the following methods:

(a) By voluntary payment by the person liable.

(b) By legal proceedings instituted in a court of competent jurisdiction.

(3) Any person required to pay the assessment provided for in this chapter who fails to remit same or who refuses to allow full inspection of the premises, or the books, records or other documents relating to the liability of the person for the assessment herein imposed, or who shall hinder or in any way delay or prevent the inspection, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or both.

(4) The provisions of this chapter shall not apply to any person who purchases one thousand (1,000) or fewer bushels of corn in any calendar year, provided he is not regularly engaged in the purchase of corn.

SOURCES: Laws, 2006, ch. 512, § 4; brought forward without change, Laws, 2009, ch. 393, § 20, eff from and after July 1, 2009.

Cross References — State Tax Commission to assist department in collecting assessments provided for in this chapter, see § 69-44-11.

§ 69-44-9. Expenditure of funds; annual report of income and expenditures; penalty for failure to report.

(1) The board shall plan and conduct a program of research, education and advertising designed to promote the corn industry in Mississippi. The board is authorized to use the funds derived from the assessment imposed herein for these purposes, including basic administration expenses of the plan. Use of these funds may be applied, as prescribed in this section, within or without the State of Mississippi, including regional, national and international research and promotional applications.

(2)(a) The Mississippi Legislature finds and declares that the factors which affect the ability of Mississippi corn farmers to market their crop are established by national and international forces in the world market. The Legislature further finds and declares that the expenditure of funds by the board for the purpose of influencing the development and implementation of national and international policy affecting the marketing of corn produced by Mississippi farmers is the expenditure of funds for a public purpose.

(b) The board may expend a portion of the funds received and administered by the board for the purpose of influencing the development and implementation of national and international policy affecting the marketing of corn produced by Mississippi farmers.

(c) The amount of funds expended by the board in each fiscal year for the purposes authorized in this subsection shall not exceed fifteen percent (15%) of the budget of the board for that fiscal year.

(d) The board shall not expend any funds for the purpose of influencing any political activity.

(3) A report of all income and expenditures shall be made annually on December 31, with four (4) copies of the report to be filed and presented during the regular sessions of the Mississippi Legislature with each of the following: the Chairman of the House of Representatives Agriculture Committee, the Chairman of the Senate Agriculture Committee, the Mississippi Department of Agriculture and Commerce and the State Auditor.

(4) If the board fails to make an annual report in violation of the provisions of subsection (3) of this section, the board shall be subject to a fine of not more than Five Hundred Dollars ($500.00).

SOURCES: Laws, 2006, ch. 512, § 5; Laws, 2009, ch. 393, § 21, eff from and after July 1, 2009.

§ 69-44-11. State Tax Commission to assist department in collecting assessments.

The State Tax Commission shall provide any information necessary to assist the department in collecting the assessments provided for in this chapter.

SOURCES: Laws, 2006, ch. 512, § 6; brought forward without change, Laws, 2009, ch. 393, § 22, eff from and after July 1, 2009.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 69-44-13. Provisions to be controlling.

Notwithstanding the provisions of any laws or parts of laws in conflict herewith, the provisions of this chapter shall be controlling to the extent of the conflict.

SOURCES: Laws, 2006, ch. 512, § 7; brought forward without change, Laws, 2009, ch. 393, § 23, eff from and after July 1, 2009.

§ 69-44-15. Commissioner authorized to audit Corn Promotion Board; information to be included in audit; injunction for violations of chapter.

(1) The commissioner may conduct an audit of the board to verify compliance with any rules and regulations promulgated for the efficient enforcement of this chapter.

(2) Under this section, the audited board shall provide information to the commissioner that verifies the amounts received and expended from the fees assessed and collected by the department and remitted to the board. Records

maintained in the course of the normal conduct of business by the board may serve as verification.

(3) The commissioner may apply for and the court may grant a temporary or permanent injunction on disbursements made to the board from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

SOURCES: Laws, 2009, ch. 393, § 24, eff from and after July 1, 2009.

CHAPTER 45

Mississippi Agricultural Promotions Program Act

Sec.
69-45-1. Short title.
69-45-3. Legislative findings.
69-45-5. Definitions.
69-45-7. Establishment of program to finance and promote agricultural economic development.
69-45-9. Purpose of chapter; duties of Division of Market Development.
69-45-11. Registration of participants.
69-45-13. Creation of Mississippi Agricultural Promotions Fund.
69-45-15. Unlawful use, reproduction or distribution of Program logo.

§ 69-45-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Agricultural Promotions Program Act."

SOURCES: Laws, 1999, ch. 509, § 9, eff from and after July 1, 1999.

§ 69-45-3. Legislative findings.

The Legislature finds that there is a need for a Mississippi Agricultural Promotions Program to increase consumer awareness and expand the market for Mississippi's agricultural products. The Legislature further finds that the Mississippi Department of Agriculture and Commerce, through, but not limited to, product identification programs and subsidies, loans and grants, shall promote and advertise such products.

SOURCES: Laws, 1999, ch. 509, § 10, eff from and after July 1, 1999.

§ 69-45-5. Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

(a) "Commissioner" means the Commissioner of Agriculture and Commerce.

(b) "Department" means the Department of Agriculture and Commerce.

(c) "Person" means an individual, firm, partnership, corporation, association, business, trust, legal representative or any other business unit.

(d) "Reproduce" means to stencil, emboss, print, engrave, impress, imprint, lithograph or duplicate in any manner or to cause any such acts to be done.

(e) "Agricultural product" means any product that is at least fifty-one percent (51%) grown, processed or manufactured in the State of Mississippi.

(f) "Division" means the Division of Market Development within the Department of Agriculture and Commerce.

SOURCES: Laws, 1999, ch. 509, § 11, eff from and after July 1, 1999.

§ 69-45-7. Establishment of program to finance and promote agricultural economic development.

The department, in its discretion, may establish a program of grants, loans and subsidies to be matched by agricultural entities in the state to finance and promote agricultural economic development.

SOURCES: Laws, 1999, ch. 509, § 12, eff from and after July 1, 1999.

§ 69-45-9. Purpose of chapter; duties of Division of Market Development.

(1) The purpose of this chapter is to authorize the division to establish and coordinate the Mississippi Agricultural Promotions Program. The duties of the division shall include, but are not limited to:

(a) Developing a logo and authorizing the use of that logo;

(b) Developing a program for loans, grants and subsidies;

(c) Registering participants;

(d) Requesting and collecting reimbursements from program participants;

(e) Promoting and advertising Mississippi and its agricultural products through the purchase of promotional items;

(f) Developing in-kind advertising programs and promotional materials; and

(g) Contracting with media representatives for the purpose of dispersing promotional materials.

(2) The commissioner shall promulgate rules necessary to implement the provisions of this act.

SOURCES: Laws, 1999, ch. 509, § 13, eff from and after July 1, 1999.

§ 69-45-11. Registration of participants.

Any person who participates in the Mississippi Agricultural Promotions Program shall register annually with the department in a form and manner as required by the department. Each person shall renew his registration by July 1 of each year.

SOURCES: Laws, 1999, ch. 509, § 14, eff from and after July 1, 1999.

§ 69-45-13. Creation of Mississippi Agricultural Promotions Fund.

There is created a special fund to be designated as the "Mississippi Agricultural Promotions Fund" within the State Treasury to receive all monies related to the Mississippi Agricultural Promotions Program. Monies deposited in the fund shall be expended, upon legislative appropriations, and upon requisition therefor by the Commissioner of Agriculture, for the sole purpose of implementing the Mississippi Agricultural Promotions Program. Unexpended amounts remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund.

SOURCES: Laws, 1999, ch. 509, § 15, eff from and after July 1, 1999.

§ 69-45-15. Unlawful use, reproduction or distribution of Program logo.

It is unlawful for any person to use, reproduce or distribute the logo of the Mississippi Agricultural Promotions Program without being registered with the department or to otherwise violate the provisions of this chapter or any rules adopted under this chapter. Any person who violates any of the provisions of this chapter or any rule promulgated under this chapter revokes his rights for logo use or any funding hereunder.

SOURCES: Laws, 1999, ch. 509, § 16, eff from and after July 1, 1999.

CHAPTER 46

Mississippi Land, Water and Timber Resources Act

Sec.

69-46-1. Short title.

69-46-3. Mississippi Land, Water and Timber Resources Board; creation; purpose; composition; meetings.

69-46-5. Powers and duties of board.

69-46-7. Mississippi Land, Water and Timber Resources Fund; expenditures; authorization for borrowing in anticipation of bonds.

§ 69-46-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Land, Water and Timber Resources Act."

SOURCES: Laws, 2000, 2nd Ex Sess, ch. 1, § 53, eff from and after passage (approved Aug. 30, 2000.)

Editor's Note — Laws, 2000, 2nd Ex Sess, ch. 1, § 1 provides:
"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

§ 69-46-3. Mississippi Land, Water and Timber Resources Board; creation; purpose; composition; meetings.

(1) There is created the Mississippi Land, Water and Timber Resources Board, hereinafter referred to as "the board," for the purpose of assisting Mississippi agricultural industry in the development, marketing and distribution of agricultural products.

(2) The board shall be composed of the following members:

(a) The Chairman of the Senate Agriculture Committee, or a member of the Senate Agriculture Committee designated by the chairman, as a nonvoting member;

(b) The Chairman of the House of Representatives Agriculture Committee or a member of the House of Representatives Agriculture Committee designated by the chairman, as a nonvoting member;

(c) The Chairman of the Senate Forestry Committee, or a member of the Senate Forestry Committee designated by the chairman, as a nonvoting member;

(d) The Executive Director of the Mississippi Development Authority, or his designee;

(e) The Commissioner of the Mississippi Department of Agriculture and Commerce, or his designee;

(f) The President of the Mississippi Farm Bureau Federation, or his designee;

(g) The Director of the Cooperative Extension Service at Mississippi State University, or his designee;

(h) The Executive Director of the Agribusiness and Natural Resource Development Center at Alcorn State University, or his designee;

(i) The Director of the Agricultural Finance Division of the Mississippi Development Authority, or his designee;

(j) The Director of the Agriculture Marketing Division of the Mississippi Department of Agriculture and Commerce, or his designee;

(k) The Executive Director of the Mississippi Forestry Commission, or his designee; and

(*l*) Three (3) individuals appointed by the Governor who are active producers of Mississippi land, water or timber commodities. The Governor shall appoint one (1) such person from each Supreme Court district.

(3) The Executive Director of the Mississippi Development Authority and the Commissioner of the Mississippi Department of Agriculture and Commerce shall serve as co-chairmen of the board.

(4) The board shall meet at least once each calendar quarter at the call of the co-chairmen. A majority of the members of the board shall constitute a quorum at all meetings. An affirmative vote of a majority of the members present and voting is required in the adoption of any actions taken by the board. All members must be notified, in writing, of all regular and special meetings of the board, which notices must be mailed at least ten (10) days before the dates of the meetings. All meetings shall take place at the State Capitol in Jackson, Mississippi. The board shall provide a copy of the minutes of each of its meetings to the Chairman of the Senate Agriculture Committee and the Chairman of the House of Representatives Agriculture Committee.

(5) Members of the board shall not receive compensation. However, each member may be paid travel expenses and meals and lodging expenses as provided in Section 25-3-41, for such expenses incurred in furtherance of their duties. Travel expenses and meals and lodging expenses and other necessary expenses incurred by the board shall be paid out of funds appropriated to the Mississippi Development Authority.

(6) In carrying out the provisions of the Mississippi Land, Water and Timber Resources Act, the board may utilize the services, facilities and personnel of all departments, agencies, offices and institutions of the state, and all such departments, agencies, offices and institutions shall cooperate with the board in carrying out the provisions of such act.

SOURCES: Laws, 2000, 2nd Ex Sess, ch. 1, § 54, eff from and after passage (approved Aug. 30, 2000.)

Editor's Note — Laws, 2000, 2nd Ex Sess, ch. 1, § 1 provides: "SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

§ 69-46-5. Powers and duties of board.

The board shall have the following powers and duties:

(a) To develop marketing plans and opportunities for independent farmers in Mississippi;

(b) To encourage the commercialization of new agricultural technology businesses;

(c) To initiate the development of processing facilities for Mississippi agricultural commodities;

(d) To initiate the development of Mississippi wholesale distribution businesses for agricultural inputs and products;

(e) To promote the development of institutional and specialty markets for Mississippi agriculture products;

(f) To encourage additional research for new agricultural product development;

(g) To develop a working relationship with the state offices of the United States Department of Agriculture as may be appropriate for the promotion and development of agriculture in Mississippi;

(h) To promote the rural quality of life in Mississippi through such programs as 4-H, Future Farmers of America and agricultural education;

(i) To encourage, promote and initiate the development of alternative energy strategies, applied research technologies and commercialization enterprises that focus on Mississippi natural resources, including, but not limited to, agriculture, timber and poultry products and byproducts;

(j) To file an annual report with the Governor, Secretary of the Senate and the Clerk of the House of Representatives not later than December 1 of each year, with recommendations for any legislation necessary to accomplish the purposes of the Mississippi Land, Water and Timber Resources Act;

(k) The board may promulgate and enforce rules and regulations, in accordance with the Mississippi Administrative Procedures Law, as may be necessary to carry out the provisions of the Mississippi Land, Water and Timber Resources Act;

(*l*) To expend funds out of the Mississippi Land, Water and Timber Resources Fund to carry out its powers and duties under the Mississippi Land, Water and Timber Resources Act;

(m) The board may provide funds to public entities and private entities through loans, grants, contracts and any other manner the board determines appropriate for the purposes of carrying out the provisions of the Mississippi Land, Water and Timber Resources Act.

SOURCES: Laws, 2000, 2nd Ex Sess, ch. 1, § 55; Laws, 2001, ch. 538, § 17; Laws, 2002, ch. 411, § 1; Laws, 2002, ch. 542, § 17, eff from and after passage (approved Apr. 9, 2002.)

Joint Legislative Committee Note — Section 1 of ch. 411, Laws, 2002, effective from and after passage (approved March 19, 2002), amended this section. Section 17 of ch. 542, Laws, 2002, effective from and after passage (approved April 9, 2002) also amended this section. As set out above, this section reflects the language of Section 17 of ch. 542, Laws, 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall superseded all other amendments to the same section approved on an earlier date.

Editor's Note — Laws, 2000, 2nd Ex Sess, ch. 1, § 1 provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

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The Mississippi Land, Water and Timber Resources Board may contract with a private entity if that contract will further the purposes and duties of the board; an agreement with a private entity may be in the form of a contract for services or in the form of a grant, but, in either case, the contract or grant agreement should set out in reasonable detail the services and functions which will be performed by the private entity on behalf of the board. Spell, Jr., Feb. 1, 2002, A.G. Op. #02-0027.

The Land, Water and Timber Resources Board can enter into a loan or grant agreement for administration and disbursement of funds with a regional planning and development district, which are private entities often utilized as conduits for grants to small businesses for the purpose of job creation and small business development; further, the Land, Water and Timber Resources Board can make loans or grants for specific projects to certain local governmental entities as are empowered to administer same, such as a county economic development district. Spell, Jr., Apr. 25, 2002, A.G. Op. #02-0226.

While the language in subsection (i) of this section grants fairly broad authority to the Mississippi Land, Water and Timber Resources Board does not grant the authority to the Board to merely fund the purchase of equipment utilizing existing forms of energy. The Board has the power to enact regulations which further define and clarify the terms "alternative energy" and "Mississippi natural resources." Spell, Aug. 8, 2003, A.G. Op. 03-0373.

The Land, Water and Timber Resources Board has the authority to loan to a purchaser a portion of the purchase price of the facility. Speed, Apr. 15, 2005, A.G. Op. 05-0191.

§ 69-46-7. Mississippi Land, Water and Timber Resources Fund; expenditures; authorization for borrowing in anticipation of bonds.

(1)(a) The Mississippi Land, Water and Timber Resources Board may accept and expend funds appropriated or otherwise made available by the Legislature and funds from any other source in order to carry out the provisions of the Mississippi Land, Water and Timber Resources Act. Such funds shall be deposited into a special fund hereby established in the State Treasury to be known as the "Mississippi Land, Water and Timber Resources Fund." Unexpended amounts derived from bond proceeds or private funds, or both, remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on such amounts in the fund shall be deposited to the credit of the fund. All other unexpended amounts remaining in the fund at the end of a fiscal year shall lapse into the State General Fund. The board may provide to the Mississippi Department of Agriculture and Commerce not more than Two Hundred Fifty Thousand Dollars ($250,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 1 through 16 of Chapter 538, Laws of 2001, and/or Sections 1 through 16 of Chapter 542, Laws of 2002, for the purpose of providing additional funds to defray costs incurred by the department in assisting the board in carrying out the provisions of the Mississippi Land, Water and Timber Resources Act. However, the Mississippi Department of Agriculture and Commerce may not useany portion of such funds for the purpose of hiring any personas an employee as defined in Section 25-3-91(c). The Mississippi Department of

Agriculture may escalate its budget and expend such funds, when provided by the board, in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds. The board may provide to the Mississippi Development Authority not more than Two Hundred Fifty Thousand Dollars ($250,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 1 through 16 of Chapter 538, Laws of 2001, and/or Sections 1 through 16 of Chapter 542, Laws of 2002, for the purpose of providing additional funds to defray costs incurred by the Mississippi Development Authority in assisting the board in carrying out the provisions of the Mississippi Land, Water and Timber Resources Act. However, the Mississippi Development Authority may not use any portion of such funds for the purpose of hiring any person as an employee as defined in Section 25-3-91(c). The Mississippi Development Authority may escalate its budget and expend such funds, when provided by the board, in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(b)(i) The Mississippi Land, Water and Timber Resources Board may provide to the Mississippi Department of Agriculture and Commerce not more than One Hundred Twenty-five Thousand Dollars ($125,000.00), in the aggregate, of monies in the fund that a rederived from proceeds of bonds issued under Sections 1 through 16 of Chapter 505, Laws of 2003, and One Hundred Twenty-five Thousand Dollars ($125,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 72 through 87 of Chapter 1 of Laws of 2004, Third Extraordinary Session, for the purpose of providing additional funds to defray costs incurred by the department in assisting the board in carrying out the provisions of the Mississippi Land, Water and Timber Resources Act. However, the Mississippi Department of Agriculture and Commerce may not use any portion of such funds for the purpose of hiring any person as an employee as defined in Section 25-3-91(c). The Mississippi Department of Agriculture and Commerce may escalate its budget and expend such funds, when provided by the board, in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(ii) The Mississippi Land, Water and Timber Resources Board may provide to the Mississippi Development Authority not more than One Hundred Twenty-five Thousand Dollars ($125,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 1 through 16 of Chapter 505, Laws of 2003, and One Hundred Twenty-five Thousand Dollars ($125,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 72 through 87 of Chapter 1 of Laws of 2004, Third Extraordinary Session, for the purpose of providing additional funds to defray costs incurred by the Mississippi Development Authority in assisting the board in carrying out the provisions of the Mississippi Land, Water and Timber Resources

Act. However, the Mississippi Development Authority may not use any portion of such funds for the purpose of hiring any person as an employee as defined in Section 25-3-91(c). The Mississippi Development Authority may escalate its budget and expend such funds, when provided by the board, in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(iii) The Mississippi Land, Water and Timber Resources Board may provide to the Department of Audit not more than Fifty Thousand Dollars ($50,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 1 through 16 of Chapter 505, Laws of 2003, and Fifty Thousand Dollars ($50,000.00), in the aggregate, of monies in the fund that are derived from proceeds of bonds issued under Sections 72 through 87 of Chapter 1 of Laws of 2004, Third Extraordinary Session, for the purpose of providing additional funds to defray costs incurred by the department in assisting the board in carrying out the provisions of the Mississippi Land, Water and Timber Resources Act. However, the Department of Audit may not use any portion of such funds for the purpose of hiring any person as an employee as defined in Section 25-3-91(c). The Department of Audit may escalate its budget and expend such funds, when provided by the board, in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(2) The Mississippi Land, Water and Timber Resources Board shall set aside One Million Dollars ($1,000,000.00) of the monies in the Mississippi Land, Water and Timber Resources Fund, that are derived from proceeds of bonds issued under Sections 1 through 16 of Chapter 505, Laws of 2003, for the purpose of providing funds to the Mississippi Department of Agriculture and Commerce for use in making payments to ethanol producers under Section 69-51-5 during the State Fiscal Year beginning July 1, 2003, and ending June 30, 2004. Any monies set aside which are not used for such purposes during the fiscal year shall no longer be set aside for such purposes after the end of the fiscal year. In addition, if the Commissioner of Agriculture and Commerce determines during such fiscal year that no ethanol producer will be eligible for such payments during the fiscal year, the commissioner shall inform the board of his determination and the monies set aside shall no longer be set aside for such purposes. The Mississippi Department of Agriculture and Commerce may escalate its budget and expend funds, when provided by the board under this subsection (2), in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(3) In anticipation of the issuance of bonds authorized for the purpose of providing funds for the Mississippi Land, Water and Timber Resources Fund, the State Bond Commission is authorized to negotiate and enter into any purchase, loan, credit or other agreement with any bank, trust company or other lending institution or to issue and sell interim notes for the purpose of

carrying out the provisions of the Mississippi Land, Water and Timber Resources Act. All borrowings made under this subsection (3) shall be evidenced by notes of the State of Mississippi, which shall be issued from time to time, for such amounts, in such form and in such denomination and subject to such terms and conditions of sale and issuance, prepayment or redemption and maturity, rate or rates of interest not to exceed the maximum rate authorized for bonds in Section 75-17-101, and time of payment of interest as the State Bond Commission shall agree to in such agreement. Such notes shall constitute general obligations of the State of Mississippi, and shall be backed by the full faith and credit of the state. Such notes may also be issued for the purpose of refunding previously issued notes. No note shall mature more than three (3) years following the date of its issuance. The State Bond Commission is authorized to provide for the compensation of any purchaser of the notes by payment of a fixed fee or commission and for all other costs and expenses of issuance and service, including paying agent costs. Such costs and expenses may be paid from the proceeds of the notes. Borrowings made under the provisions of this subsection (3) shall not exceed the aggregate sum of Five Million Dollars ($5,000,000.00) outstanding at any one time.

SOURCES: Laws, 2000, 2nd Ex Sess, ch. 1, § 56; Laws, 2002, ch. 542, § 18; Laws, 2003, ch. 505, § 17; Laws, 2004, 3rd Ex Sess., ch. 1, § 88, eff from and after passage (approved November 24, 2004.)

Editor's Note — Laws, 2001, ch. 538, §§ 1 through 16 authorize the issuance of general obligation bonds for the purpose of providing funds for the Mississippi Land, Water and Timber Resources Fund.

Laws, 2000, 2nd Ex Sess, ch. 1, § 1 provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Laws, 2004, 3rd Ex Sess, ch. 1, § 228 provides:

"SECTION 228. Except as otherwise provided in this act, any entity using funds authorized and made available under Chapter 1, 2004 Third Extraordinary Session, is authorized, in its discretion, to set aside not more than twenty percent (20%) of such funds for expenditure with small business concerns owned and controlled by socially and economically disadvantaged individuals. The term "socially and economically disadvantaged individuals" shall have the meaning ascribed to such term under Section 8(d) of the Small Business Act (15 USCS, Section 637(d))and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section."

CHAPTER 47

Organic Certification Program

Sec.
69-47-1. Definitions [Repealed effective July 1, 2013].
69-47-3. Repealed.
69-47-5. Certification required for sale of organic food; farm plan; tissue testing of crops; fields under organic management to have distinct and defined boundaries; soil fertility, water residue, and plant-tissue test results; certification rating system; technical assistance to applicant [Repealed effective July 1, 2013].
69-47-7. Avoidance of pesticides and other comtaminating residues [Repealed effective July 1, 2013].
69-47-9. Crops certified as "organic" only after 3 years since use of pesticides and fertilizers; "transition to organic" certification [Repealed effective July 1, 2013].
69-47-11. Recertification after removal from organic management.
69-47-13. Records; inspections [Repealed effective July 1, 2013].
69-47-15. Audits.
69-47-17. Applications for certification [Repealed effective July 1, 2013].
69-47-19. Conditions for retail sale of organic products; retailer or distributor to have proper facilities and management procedures for prevention of commingling [Repealed effective July 1, 2013].
69-47-21. Certification of drugs or drug ingredients prohibited under this chapter; certified organic mark may not be used for products regulated as drugs or that make medicinal claims [Repealed effective July 1, 2013].
69-47-23. Inspections of normal production, post-harvest, and sales activity; stop sale orders; filing of complaints; records of complaints, investigations, and remedial actions [Repealed effective July 1, 2013].
69-47-25. Inspection and renewal fees.
69-47-27. Prohibited acts [Repealed effective July 1, 2013].
69-47-29 and 69-47-31. Repealed.
69-47-33. Repealed.

§ 69-47-1. Definitions [Repealed effective July 1, 2013].

For the purpose of this chapter, the following terms shall have the following meanings:

(a) "Agricultural product" means any agricultural commodity or product, whether raw or processed, that is marketed for human consumption.

(b) "Certified organic farm" means a farm or portion of a farm or a site where agricultural products are produced that is certified by the United States Department of Agriculture under its National Organic Program standards as utilizing a system of organic farming.

(c) "Certifier" means an organic certifying agent accredited by the United States Department of Agriculture National Organic Program.

(d) "Commissioner" means the Commissioner of the Mississippi Department of Agriculture and Commerce.

(e) "Department" means the Mississippi Department of Agriculture and Commerce.

(f) "EPA" means the United States Environmental Protection Agency.

(g) "Farm plan" means a plan of management of an organic farm that has been agreed to by the producer or handler meeting all requirements established by the United States Department of Agriculture National Organic Program and that includes written plans concerning all aspects of agricultural production or handling, including all practices required under this chapter.

(h) "FDA" means the United States Food and Drug Administration.

(i) "Greenhouse unit" or "unit" means a structure intended or used for the production of agricultural products.

(j) "Handler" means any person engaged in the business of handling agricultural products, except such term shall not include final retailers of agricultural products that do not process agricultural products.

(k) "Mississippi organic materials and practices (MOMP)" means a list of approved and prohibited substances and practices as adopted.

(*l*) "Organic farming" means a food production system based on farm management methods or practices that rely on building soil fertility by utilizing crop rotation, recycling of organic wastes, application of unsynthesized minerals and, when necessary, mechanical, botanical or biological pest control.

(m) "Organic food" means a food which is labeled as organic or organically grown and which has been produced, transported, distributed, processed and packaged without the use of synthetic pesticides, synthetically compounded fertilizers, synthetic growth hormones, genetically modified organisms or artificial radiation and which has been verified by the department as complying with all provisions of this chapter.

(n) "Organically managed or produced" means an agricultural product that is produced and handled in accordance with all the provisions of this chapter and any regulations adopted thereunder.

(o) "Person" means an individual, group of individuals, corporation, association, organization, cooperative or other entity.

(p) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest and any substance or combination of substances intended for use as a plant regulator, defoliant, desiccant or any substance the commissioner determines to be a pesticide.

(q) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, preserving, dehydrating, freezing or otherwise manufacturing and includes the packaging, canning, jarring or otherwise enclosing food in a container.

(r) "Producer" means a person who engages in the business of growing or producing food, feed and ornamental plants.

(s) "Prohibited substances, fertilizers, materials, pesticides" mean those substances, fertilizers, materials, pesticides or practices prohibited by this chapter or regulations from use in a certified organic farming operation.

(t) "Restricted" means substances and practices which use is limited or qualified by the commissioner.

(u) "Tolerance" means the amount of a pesticide permitted on raw or processed agricultural commodities.

(v) "Organic assisting agent" means the Mississippi State University Cooperative Extension Service.

SOURCES: Laws, 2000, ch. 600, § 1; Laws, 2003, ch. 480, § 1; Laws, 2011, ch. 482, § 1, eff from and after passage (approved Apr. 4, 2011.)

Editor's Note — Laws of 2011, ch. 482, § 13, effective April 4, 2011, provides:

"SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013."

Amendment Notes — The 2011 amendment substituted "United States Department of Agriculture under its National Organic Program standards" for "department" in (b) and (g); added (c); inserted "meeting all requirements" in (g); added (v); and redesignated former (c) through (t) as (d) through (u).

§ 69-47-3. Repealed.

Repealed by Laws of 2011, ch. 482, § 11, effective from and after passage (Approved April 4, 2011).

§ 69-47-3. [Laws, 2000, ch. 600, § 2; Laws, 2003, ch. 480, § 2, eff from and after July 1, 2003.]

Editor's Note — Section 11 of Chapter 482, Laws of 2011, repealed this section, effective upon passage (April 4, 2011). Section 13 of Chapter 482 provided for the repeal of Sections 1 through 12 of the act, effective July 1, 2013. The co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation determined that the repealer contained in Section 13 of Chapter 482 has no effect on the repeal of this section, and the section is repealed effective April 4, 2011.

Former § 69-47-33 created an advisory committee to the organic certification program.

§ 69-47-5. Certification required for sale of organic food; farm plan; tissue testing of crops; fields under organic management to have distinct and defined boundaries; soil fertility, water residue, and plant-tissue test results; certification rating system; technical assistance to applicant [Repealed effective July 1, 2013].

(1) Any producer who sells or intends to sell organic food shall apply to be organically certified in accordance with this chapter.

(2)(a) An applicant for certification must document that the land, individual field or greenhouse units to be certified shall be managed organically. Documentation for certification shall be in the form of a detailed, three-year farm plan for land, fields or units and in a format acceptable under the United States Department of Agriculture National Organic Program standards. The application shall be reviewed by the organic certification program director.

(b) An applicant for certification may seek the aid of the Mississippi State University Cooperative Extension Service, which shall be the organic assisting agent to provide technical assistance and information in the application process to ensure that the necessary requirements of the application are met before submission to the certifier for approval. The organic assisting agent shall meet the requirements established by the United States Department of Agriculture National Organic Program standards before providing such assistance or offering any training to individuals in the area of organic farming.

(3) The farm plan shall include:

(a) Rotation and nutrient-stabilization plans for each field or unit under organic management;

(b) One-year, agronomic field-by-field crop practice and spray plans for each field or unit of the farm which is organically managed;

(c) A map of the field to be organically managed which also indicates all buffer zones and their width, with a buffer zone separating land managed organically from other cultivated agricultural land and a buffer zone separating greenhouse units managed organically from other units;

(d) A description of facility and methods that shall be used to keep organically managed crops and livestock from post-harvest segregated from nonorganically managed crops and livestock;

(e) A description of facilities and methods that will be used to keep farm equipment from contaminating organically managed fields; and

(f) A description of facilities and methods that shall be used to store and handle prohibited materials separately from permitted materials.

(4) A crop grown in an organically managed field, any part of which is located in close proximity to a field to which a prohibited pesticide has been applied, shall be tissue-tested for residues of that pesticide before the harvest of the organic crop.

(5) A field that is part of a farm shall not be certified as organically managed unless there exist distinct, defined boundaries between fields under organic management and other fields.

(6) Land that has no previous history as cultivated cropland, orchard or improved pasture, and that is being converted to organic for the sole purpose of replacing land abandoned because of chemical contamination or depleted fertility resulting from previous farm-management practices shall not be certified.

(7) An applicant for certification may present soil fertility test results for each field or greenhouse unit to be certified initially and every third year thereafter.

(8) An applicant may also present the results of water residue and plant-tissue tests as required by the department.

(9) The department shall not provide technical assistance to any applicant in the preparation of an application or development of a farm plan for certification or recertification as an organic farming operation, except in those instances in which the organic assisting agent lacks the ability to provide such assistance and defers its ability to do so to the department. The department shall be responsible for approving application for certification, managing and administering the certification program, performing inspections of records,

products and organic farming fields to determine compliance with this chapter, the enforcement of the penalties for violations thereof, and any other duties for the necessary implementation of this chapter for which they have authority and which do not create a conflict of interest.

SOURCES: Laws, 2000, ch. 600, § 3; Laws, 2003, ch. 480, § 3; Laws, 2004, ch. 497, § 1; Laws, 2011, ch. 482, § 2, eff from and after passage (approved Apr. 4, 2011.)

Editor's Note — Laws of 2011, ch. 482, § 13, effective April 4, 2011, provides: "SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013."

Amendment Notes — The 2011 amendment substituted "be organically certified" for "the department for certification" in (1); in (2), substituted "under the United States Department of Agriculture National Organic Program standards" for "to the department" in the second sentence of (a), and added (b); rewrote (5) and (6); and added (9).

§ 69-47-7. Avoidance of pesticides and other comtaminating residues [Repealed effective July 1, 2013].

(1) Every precaution shall be taken to avoid pesticide or other contaminating residues on agricultural products sold or labeled as organic. In cases of unavoidable environmental contamination, residues shall not exceed the limits set by the department. For any substance not currently regulated by federal law, the department may set appropriate action levels.

(2) The department may sample a percentage of organic raw agricultural commodities and organic processed food products as part of the state pesticide residue monitoring program. Results obtained from organic produce and organically processed product samples shall be compiled in a separate annual report and submitted to the United States Department of Agriculture.

(3) If a pesticide residue or residue of another prohibited substance is found on an organic raw agricultural commodity or an organically processed product by a state pesticide residue monitoring program, the department may conduct an investigation of the appropriate handler, producer or processor.

(4) The department may conduct periodic residue testing of agricultural products sold as organic in the following situations:

(a) In cases of pesticide drift;

(b) When farm or handling facility inspection leads to suspicion of residue problems;

(c) Suspicion that the soil harbors contaminants;

(d) Suspicion that irrigation water or rainfall contains residues;

(e) During the thirty-six-month period immediately following treatment of a certified organic farm by a state or federal emergency spray program; or

(f) In response to complaints, or to follow up on positive residue testing results from federal, state or local government testing.

SOURCES: Laws, 2000, ch. 600, § 4; Laws, 2011, ch. 482, § 3, eff from and after passage (approved Apr. 4, 2011.)

Editor's Note — Laws of 2011, ch. 482, § 13, effective April 4, 2011, provides: "SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013."

Amendment Notes — The 2011 amendment substituted "may sample" for "shall sample" in (2).

§ 69-47-9. Crops certified as "organic" only after 3 years since use of pesticides and fertilizers; "transition to organic" certification [Repealed effective July 1, 2013].

(1) The certifier may certify a crop as organic only if harvest occurs at least three (3) years after the most recent use of a prohibited pesticide and at least three (3) years after the most recent use of a prohibited fertilizer.

(2) Farmers, growers or producers may be certified as "transition to organic" within the three-year period required for being certified as organic pursuant to subsection (1) of this section. A "transition to organic" certification shall not exceed three (3) consecutive years for the same farm unit.

SOURCES: Laws, 2000, ch. 600, § 5; Laws, 2011, ch. 482, § 4, eff from and after passage (approved Apr. 4, 2011.)

Editor's Note — Laws of 2011, ch. 482, § 13, effective April 4, 2011, provides: "SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013."

Amendment Notes — The 2011 amendment substituted "certifier" for "department" in (1).

§ 69-47-11. Recertification after removal from organic management.

If a certified farm, field or greenhouse unit is removed from organic management, it may be recertified after passage of three (3) years without the application of a prohibited pesticide and two (2) years without the application of a prohibited fertilizer or other prohibited material.

SOURCES: Laws, 2000, ch. 600, § 6, eff from and after July 1, 2000.

§ 69-47-13. Records; inspections [Repealed effective July 1, 2013].

(1) The following records shall be kept for each farm, field or other agricultural production unit for which application for certification is made:

(a) Copies of farm questionnaires devised by the certifier and completed by applicants for certification;

(b) Field-by-field or unit-by-unit fertilization, cropping and pest management histories;

(c) Records of all laboratory analyses performed for a farm, including soil tests, plant-tissue tests, forage tests, bacteria counts and residue tests for toxic contaminants in soil, water or crops for at least three (3) years and made available for review by the department;

(d) Records of all crops produced shall show by lot, bin or shipment numbers and dates which field a particular lot came from;

(e) A producer of both organic produce and nonorganic produce on the same farm shall keep separate records for each of these two (2) categories. The sales records shall include verification documents such as questionnaires, farm plans, affidavits, inspection reports, laboratory analyses and documents showing the path taken by an organic food product through post-harvest handling and distribution;

(f) Other documentation required to complete the application for certification or recertification as required under Section 69-47-5;

(g) Records of any training, application assistance and farm-plan development assistance received from the organic assisting agent in the preparation and completion of the application for certification or recertification.

(2) The following records shall be kept for processors:

(a) The certifier-devised questionnaire covering all nonfarm aspects of food processing and manufacturing, if applicable, to be prepared for each stage of the processing where a food is substantially changed from its previous state and covering every aspect of the product relevant to the certifier's certification standards; and

(b) Notarized affidavits and agreements declaring that the information they provide is accurate.

(3) The department or the certifier may conduct unannounced inspections of certified producers and certified processors.

SOURCES: Laws, 2000, ch. 600, § 7; Laws, 2011, ch. 482, § 5, eff from and after passage (approved Apr. 4, 2011.)

Editor's Note — Laws of 2011, ch. 482, § 13, effective April 4, 2011, provides: "SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013."

Amendment Notes — The 2011 amendment substituted "certifier" for "department" in (1)(a) and twice in (2)(a); added (1)(g); deleted former (3) relating to annual on-site inspections; and redesignated former (4) as (3), and inserted "or the certifier" therein.

§ 69-47-15. Audits.

(1) The department may conduct or provide for audits of all documents used to verify that certified products meet organic standards.

(2) These audits shall include, where appropriate:

(a) An inventory audit, a listing of the formulations of the product, percent accuracy in labeling, the amount bought and sold per product and producer or destination and the number of vendors and amount of product per vendor; or

(b) A farm audit, listing the amounts sold per product, date and destination and the area and location planted of each product with dates of harvest.

(3) Information contained in audit records that is exempt under the Public Records Act of Mississippi shall remain confidential. Such exempt confidential information shall include, but not be limited to:

(a) Information that, if released, would give advantage to competitors or bidders; and

(b) Trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

SOURCES: Laws, 2000, ch. 600, § 8, eff from and after July 1, 2000.

Cross References — Public access to public records, see §§ 25-61-1 et seq.

§ 69-47-17. Applications for certification [Repealed effective July 1, 2013].

(1) Applications submitted under this chapter shall be in writing on a form acceptable to the United States Department of Agriculture National Organic Program.

(2) A separate application shall be submitted for each farm, farm unit, processing plant, distribution facility or retail operation, if operated as a separate entity by the owner.

(3) Applications and verification documents shall be submitted to the appropriate certifier.

SOURCES: Laws, 2000, ch. 600, § 9; Laws, 2004, ch. 497, § 2; Laws, 2011, ch. 482, § 6, eff from and after passage (approved Apr. 4, 2011.)

Editor's Note — Laws of 2011, ch. 482, § 13, effective April 4, 2011, provides:
"SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013."

Amendment Notes — The 2011 amendment substituted "acceptable to the United States Department of Agriculture National Organic Program" for "prescribed by the department" in (1); substituted "an appropriate certifier" for "Mississippi Department of Agriculture and Commerce" at the end of (3); deleted former (4) and (5), which read: "(4) The department shall authorize retailers and distributors to use the Mississippi certified organic mark upon satisfactory completion and approval of a department application form" and "(5) All applicants entitled to use the mark shall be subject to inspection by the department."

§ 69-47-19. Conditions for retail sale of organic products; retailer or distributor to have proper facilities and management procedures for prevention of commingling [Repealed effective July 1, 2013].

(1) The following conditions apply generally to the retail sale of organic products:

(a) Any person selling organic products shall be certified by an appropriate certifier, shall renew certification annually and shall abide by the provisions of this chapter.

(b) Products bearing a Mississippi organic or transitional organic mark shall be easily identifiable to consumers and shall be clearly distinguishable from similar products that are not Mississippi certified or transitional organic.

(c) A certified retailer may sell or hold out for sale as organic those agricultural products that have been certified as organically produced by the official certifying agent for the state of origin.

(2) A retailer or distributor shall have in place physical facilities and management procedures adequate to prevent commingling of organic food or organic products with other nonorganic or contaminated food or products during distribution or stocking.

SOURCES: Laws, 2000, ch. 600, § 10; Laws, 2011, ch. 482, § 7, eff from and after passage (approved Apr. 4, 2011.)

Editor's Note — Laws of 2011, ch. 482, § 13, effective April 4, 2011, provides: "SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013."

Amendment Notes — The 2011 amendment substituted "an appropriate certifier" for "the department" in (1)(a); and deleted former (1)(b), which read: "A certified retailer may use the department approved mark to identify only certified organic or transition to organic food produced in Mississippi by a department certified producer;" and redesignated (1)(c) and (d) as (1)(b) and (c).

§ 69-47-21. Certification of drugs or drug ingredients prohibited under this chapter; certified organic mark may not be used for products regulated as drugs or that make medicinal claims [Repealed effective July 1, 2013].

(1) Drugs or drug ingredients shall not be certified under this chapter.

(2) No person may use a Mississippi certified organic mark in connection with, nor represent as Mississippi certified organic, any product or any ingredient of a product that is regulated as a drug or that has been determined by a state or federal agency of competent jurisdiction to be subject to regulation as a drug.

(3) No person may use a Mississippi certified organic mark or represent any product or ingredient as Mississippi certified organic in an advertisement including, but not limited to, a printed or broadcast advertisement, "advertorial," flier, point-of-purchase material, signage or other printed material, that makes medicinal claims.

SOURCES: Laws, 2000, ch. 600, § 11; Laws, 2011, ch. 482, § 8, eff from and after passage (approved Apr. 4, 2011.)

Editor's Note — Laws of 2011, ch. 482, § 13, effective April 4, 2011, provides: "SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013."

Amendment Notes — The 2011 amendment rewrote (1), which read "The department shall not certify drugs or drug ingredients under this chapter."

§ 69-47-23. Inspections of normal production, post-harvest, and sales activity; stop sale orders; filing of complaints; records of complaints, investigations, and remedial actions [Repealed effective July 1, 2013].

(1) Certifiers shall perform inspections of certified producers, processors, retailers, distributors and applicants for certification at a time when normal production, post-harvest or sales activity can be observed.

(2) The department may issue a stop sale on products that falsely or erroneously claim to be organic. The stop sale may be lifted at such time as the seller can show:n.

(a) That the products were organically managed in compliance with this chapter and regulations or that of the state of origin; or

(b) That he agrees to drop any claim that the products were organically produced.

(3) The department may conduct unannounced inspections in cases of suspected violations of standards.

(4) Any person with cause to believe that any provision of this chapter has been violated may file a written or oral complaint with the United States Department of Agriculture National Organic Program setting forth the facts of the alleged violation.

(5) The department shall maintain for three (3) years records of all complaints, investigations and remedial actions. These records shall become part of the reviewing record of any proceeding involving a certified person or applicant for certification.

SOURCES: Laws, 2000, ch. 600, § 12; Laws, 2011, ch. 482, § 9, eff from and after passage (approved Apr. 4, 2011.)

Editor's Note — Laws of 2011, ch. 482, § 13, effective April 4, 2011, provides: "SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013."

Amendment Notes — The 2011 amendment substituted "Certifiers" for "The department" in (1); and substituted "United States Department of Agriculture National Organic Program" for "the department" in (4).

§ 69-47-25. Inspection and renewal fees.

(1) The department shall establish a fee schedule for application, inspection and annual certification fees. The fee schedule shall be provided to all persons inquiring about the application process.

(2) Producers and processors participating in the department's organic certification program will be charged an inspection fee and an annual certification fee. Retailers and distributors shall be charged an application fee for the initial inspection conducted by the department in accordance with this chapter and the regulations.

SOURCES: Laws, 2000, ch. 600, § 13; Laws, 2004, ch. 497, § 3, eff from and after passage (approved May 4, 2004.)

§ 69-47-27. Prohibited acts [Repealed effective July 1, 2013].

(1) The labeling, advertising or otherwise representing of food to be organic by any producer, handler, distributor or retailer is prohibited, unless the food complies with this chapter and regulations.

(2) The selling or offering for sale of food as organic which does not comply with this chapter or regulations is prohibited.

(3) The buying, selling or offering for sale of any organic food by any handler, distributor or retailer in violation of this chapter or regulations is prohibited.

SOURCES: Laws, 2000, ch. 600, § 14; Laws, 2011, ch. 482, § 10, eff from and after passage (approved Apr. 4, 2011.)

Editor's Note — Laws of 2011, ch. 482, § 13, effective April 4, 2011, provides:

"SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013."

Amendment Notes — The 2011 amendment deleted former (4), which read: "The use, employment, adoption or utilization of the Mississippi certified organic mark in the selling, advertising, marketing, packaging or other commercial handling of food and fiber product without prior application to and approval by the department is prohibited."

§§ 69-47-29 and 69-47-31. Repealed.

Repealed by Laws of 2003, ch. 480 § 4, eff from and after July 1, 2003.

§ 69-47-29. [Laws, 2000, ch. 600, § 15, eff from and after July 1, 2000.]

§ 69-47-31. [Laws, 2000, ch. 600, § 16, eff from and after July 1, 2000.]

Editor's Note — Former § 69-47-29 was entitled "Penalties for violating provision of chapter."

Former § 69-47-31 was entitled "Administrative proceedings."

§ 69-47-33. Repealed.

Repealed by Laws of 2011, ch. 482, § 12, effective from and after passage (Approved April 4, 2011).

§ 69-47-33. [Laws, 2003, ch. 480, § 5, eff from and after July 1, 2003.]

Editor's Note — Section 12 of Chapter 482, Laws of 2011, repealed this section, effective upon passage (April 4, 2011). Section 13 of Chapter 482 provided for the repeal of Sections 1 through 12 of the act, effective July 1, 2013. The co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation determined that the repealer contained in Section 13 of Chapter 482 has no effect on the repeal of this section, and the section is repealed effective April 4, 2011.

Former § 69-47-33 authorized the Department of Agriculture and Commerce to develop an organic certification program for organic meat, organic fish, organic poultry and organic seafood.

CHAPTER 48

Peanut Promotion Board

Sec.

69-48-1. Purpose of chapter; definitions.
69-48-3. Mississippi Peanut Promotion Board; membership; organization and administration; officers.
69-48-5. Assessment on peanuts grown in state; peanut promotion fund; records and reports.
69-48-7. Department authorized to collect assessment created by Peanut Promotion, Research and Consumer Information Act.
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69-48-14. Commissioner authorized to audit Peanut Promotion Board; information to be included in audit; injunction for violations of chapter.
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§ 69-48-1. Purpose of chapter; definitions.

The purpose of this chapter is to promote the growth and development of the peanut industry in Mississippi by research, advertisement promotions and education and market development, thereby promoting the general welfare of the people of this state.

For purposes of this chapter:

(a) "Board" means the Mississippi Peanut Promotion Board.

(b) "Department" means the Mississippi Department of Agriculture and Commerce.

SOURCES: Laws, 2007, ch. 321, § 1; brought forward without change, Laws, 2009, ch. 392, § 1, eff from and after July 1, 2009.

Cross References — Beef promotion and research program, see §§ 69-8-1 et seq.
Soybean promotion board, see §§ 69-9-1 et seq.
Rice promotion board, see §§ 69-10-1 et seq.
Dairy Promotion Act, see §§ 69-35-1 et seq.
Corn promotion board, see §§ 69-44-1.

§ 69-48-3. Mississippi Peanut Promotion Board; membership; organization and administration; officers.

(1) The Mississippi Peanut Promotion Board is hereby created, to be composed of six (6) members to be appointed by the Governor to serve terms of three (3) years. All of the six (6) members of the board shall be producers of peanuts in the State of Mississippi. Within ten (10) days following the effective date of this chapter, the Mississippi Farm Bureau Federation, Inc., and the Mississippi Peanut Growers Association shall each submit the names of six (6) peanut producers to the Governor, and he shall appoint three (3) members from the nominees of each organization to serve on the board on rotating

three-year terms. The original board shall be appointed with members of each of the organizations appointed as follows: one (1) for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. Each year thereafter, not less than thirty (30) days prior to the expiration of the terms of expiring board members, the organizations shall submit the names of three (3) nominees to the Governor and succeeding boards shall be appointed by the Governor in the same manner, giving equal representation to each organization. Vacancies which occur shall be filled in the same manner as the original appointments were made.

(2) The members of the board shall meet and organize immediately after their appointment, and shall elect a chairman, vice chairman and secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by such officers or specifically designated by the board. The chairman, vice chairman and secretary-treasurer shall be bonded in an amount not less than Twenty Thousand Dollars ($20,000.00). The cost of the bonds shall be paid from the funds received under this chapter. The bond shall be a security for any illegal act of such member of the board and recovery thereon may be had by the state for any injury by the illegal act of the member. The board may establish rules and regulations for its own government and the administration of the affairs of the board.

SOURCES: Laws, 2007, ch. 321, § 2; brought forward without change, Laws, 2009, ch. 392, § 2, eff from and after July 1, 2009.

§ 69-48-5. Assessment on peanuts grown in state; peanut promotion fund; records and reports.

(1)(a) There is imposed and levied an assessment at the rate of Two Dollars and Fifty Cents ($2.50) per ton net weight on all peanuts grown within the State of Mississippi or delivered to the first point of sale within the State of Mississippi. The assessment shall be deducted by the purchaser from the amount paid the producer at the first point of sale, whether within or without the state. Assessments on peanuts put under loan to the Commodity Credit Corporation or purchased by the Commodity Credit Corporation and delivered to it shall be payable when such peanuts are placed under loan or are purchased. The Commodity Credit Corporation may require deduction and payment of the assessment from the loan proceeds or from the purchase price on behalf of the producer. Assessments on peanuts put under loan to the Commodity Credit Corporation and redeemed by the producer before the takeover date, if already paid by having been deducted from the loan proceeds, shall not be deducted by each handler from the amount paid the producer at the first point of sale as provided in this section; otherwise, the assessment shall be deducted.

(b) Any peanut producer may request and receive a refund of the amount of assessment deducted from the sale of his peanuts if he makes a written application with the department within sixty (60) days from the date of sale, supported by bona fide copies of sales slips signed by the purchaser. The application forms shall be prepared by the department and shall be available at the first point of sale. All such applications shall be processed and refunds paid by the department within sixty (60) days after the funds have been received by the department. Each marketing agency shall be furnished a poster to be displayed in a prominent place, stating that refunds are available and that the forms, including self-addressed envelopes, are available at its office. If a producer pledges peanuts grown by that producer as collateral for a loan issued by the Commodity Credit Corporation and if that producer forfeits the peanuts in lieu of loan repayment, the Commodity Credit Corporation shall at the time of the loan settlement, collect the assessment from the producer.

(2) The assessment imposed and levied by this section shall be payable to and collected by the department from the purchaser of the peanuts at the first point of sale or from the Commodity Credit Corporation as provided in subsection (1) of this section. The proceeds of the assessment collected by the department shall be deposited monthly with the State Treasurer in a special fund to be established as the "Mississippi Peanut Promotion Fund," and promptly remitted to a foundation under the terms and conditions as the board deems necessary to ensure that the assessments are used properly in carrying out the purposes of this chapter.

(3) The department shall submit to the board a budget detailing and justifying the administrative costs of the department in administering the provisions of this chapter. The budget must be approved by the board by April 1 of each year. The department shall pay over to the Mississippi Peanut Promotion Fund the funds collected, less three and one-half percent (3-½%) of the gross amount collected. The amount withheld by the department must be approved by the board by July 1 of each year.

(4) Each purchaser or the Commodity Credit Corporation shall keep a complete and accurate record of all peanuts handled by him and shall furnish each producer with a signed sales slip showing the number of bushels purchased from him and the amount deducted by him for the Mississippi Peanut Promotion Fund. The records shall be in the form and contain any other information as the department shall by rule or regulation prescribe. The records shall be preserved by the purchaser for a period of two (2) years and shall be offered for inspection at any time upon oral or written demand by the department or any duly authorized agent or representative thereof. Every purchaser or the Commodity Credit Corporation, at such time or times as the department may require, shall submit reports or other documentary information deemed necessary for the efficient and equitable collection of the assessment imposed in this chapter. The department shall have the power to cause any duly authorized agent or representative to enter upon the premises of any purchaser of peanuts and examine or cause to be examined by the agent only books, papers and records which deal in any way with the payment of the assessment or enforcement of the provisions of this chapter.

SOURCES: Laws, 2007, ch. 321, § 3; brought forward without change, Laws, 2009, ch. 392, § 3, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the next-to-last sentence of (1)(a), deleting the letter "s" from the end of the word "purchases" so that "from the loan proceeds or from the purchases price" will read "from the loan proceeds or from the purchase price." The Joint Committee ratified the correction at its August 5, 2008, meeting.

§ 69-48-7. Department authorized to collect assessment created by Peanut Promotion, Research and Consumer Information Act.

The department is authorized to collect the assessment created by the Peanut Promotion, Research and Consumer Information Act administered by the U.S. Department of Agriculture on behalf of the board.

SOURCES: Laws, 2007, ch. 321, § 4; brought forward without change, Laws, 2009, ch. 392, § 4, eff from and after July 1, 2009.

Federal Aspects — Assessments created by the Peanut Promotion, Research and Information Order, see 7 CFR § 1216.51.

§ 69-48-9. Penalties; exemption.

(1) Any purchaser who fails to file a report or to pay any assessment within the time required by the department shall forfeit to the department a penalty of five percent (5%) of the assessment determined to be due, plus one percent (1%) of the amount for each month of delay or fraction thereof after the first month after the report was required to be filed or the assessment became due. The penalty shall be paid to the department and shall be disposed of by it in the same manner as funds derived from the payment of the assessment imposed herein.

(2) The department shall collect the penalties levied herein, together with the delinquent assessment, by any or all of the following methods:

(a) By voluntary payment by the person liable.

(b) By legal proceedings instituted in a court of competent jurisdiction.

(3) Any person required to pay the assessment provided for in this chapter who fails to remit same or who refuses to allow full inspection of the premises, or the books, records or other documents relating to the liability of the person for the assessment herein imposed, or who shall hinder or in any way delay or prevent the inspection, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or both.

(4) The provisions of this chapter shall not apply to any person who purchases two thousand (2,000) pounds (one (1) ton) gross weight, or less in any calendar year, provided he is not regularly engaged in the purchase of peanuts.

SOURCES: Laws, 2007, ch. 321, § 5; brought forward without change, Laws, 2009, ch. 392, § 5, eff from and after July 1, 2009.

§ 69-48-11. Expenditure of funds; reporting requirement; penalty for failure to report.

(1) The board shall plan and conduct a program of research, education and advertising designed to promote the peanut industry in Mississippi. The board is authorized to use the funds derived from the assessment imposed herein for these purposes, including basic administration expenses of the plan. Use of these funds may be applied, as prescribed in this section, within or without the State of Mississippi, including regional, national and international research and promotional applications.

(2)(a) The Mississippi Legislature finds and declares that the factors which affect the ability of Mississippi peanut farmers to market their crop are established by national and international forces in the world market. The Legislature further finds and declares that the expenditure of funds by the board for the purpose of influencing the development and implementation of national and international policy affecting the marketing, research and advertising of peanuts produced by Mississippi farmers is the expenditure of funds for a public purpose.

(b) The board may expend a portion of the funds received and administered by the board for the purpose of influencing the development and implementation of national and international policy affecting peanuts produced by Mississippi farmers.

(c) The amount of funds expended by the board in each fiscal year for the purposes authorized in this subsection shall not exceed fifteen percent (15%) of the budget of the board for that fiscal year.

(d) The board shall not expend any funds for the purpose of influencing any political activity.

(3) A report of all income and expenditures shall be made annually on December 31, with four (4) copies of the report to be filed and presented during the regular sessions of the Mississippi Legislature with each of the following: the Chairman of the House of Representatives Agriculture Committee, the Chairman of the Senate Agriculture Committee, the Mississippi Department of Agriculture and Commerce and the State Auditor.

(4) If the board fails to make an annual report in violation of the provisions of subsection (3) of this section, the board shall be subject to a fine of not more than Five Hundred Dollars ($500.00).

SOURCES: Laws, 2007, ch. 321, § 6; Laws, 2009, ch. 392, § 6, eff from and after July 1, 2009.

§ 69-48-13. State Tax Commission to assist department in collecting assessments.

The State Tax Commission shall provide any information necessary to assist the department in collecting the assessments provided for in this chapter.

SOURCES: Laws, 2007, ch. 321, § 7; brought forward without change, Laws, 2009, ch. 392, § 7, eff from and after July 1, 2009.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission'" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the "Department of Revenue."

Cross References — Duties and powers of State Tax Commission, see § 27-3-31.

§ 69-48-14. Commissioner authorized to audit Peanut Promotion Board; information to be included in audit; injunction for violations of chapter.

(1) The commissioner may conduct an audit of the board to verify compliance with any rules and regulations promulgated for the efficient enforcement of this chapter.

(2) Under this section, the audited board shall provide information to the commissioner that verifies the amounts received and expended from the fees assessed and collected by the department and remitted to the board. Records maintained in the course of the normal conduct of business by the board may serve as verification.

(3) The commissioner may apply for and the court may grant a temporary or permanent injunction on disbursements made to the board from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

SOURCES: Laws, 2009, ch. 392, § 8, eff from and after July 1, 2009.

§ 69-48-15. Provisions to be controlling.

Notwithstanding the provisions of any laws or parts of laws in conflict herewith, the provisions of this chapter shall be controlling to the extent of the conflict.

SOURCES: Laws, 2007, ch. 321, § 8; brought forward without change, Laws, 2009, ch. 392, § 9, eff from and after July 1, 2009.

CHAPTER 49

Field Crop Products

Sec.	
69-49-1.	Liability for destruction of field crop products; factors in awarding damages; limitation of damages; definition of "field crop".

§ 69-49-1. Liability for destruction of field crop products; factors in awarding damages; limitation of damages; definition of "field crop".

(1) Any person or entity who willfully and knowingly damages or destroys any field crop product that is grown for personal or commercial purposes, or for testing or research purposes in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local government agency, shall be liable for twice the value of the crop damaged or destroyed.

(2) In awarding damages under this section, the courts shall consider the market value of the crop prior to damage or destruction and production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed as part of the value of the crop.

(3) Damages available under this section shall be limited to twice the market value of the crop prior to damage or destruction plus twice the actual damages involving production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed.

(4) For the purposes of this section, "field crop" means any product grown, developed or raised for purposes, including, but not limited to, human or animal consumption, research, industrial, commercial or pharmacological purposes.

SOURCES: Laws, 2001, ch. 355, § 1, eff from and after July 1, 2001.

CHAPTER 51

Ethanol, Anhydrous Alcohol and Wet Alcohol

Sec.
69-51-1. Goal to encourage ethanol production plants.
69-51-3. Definitions.
69-51-5. Cash payments to producers of ethanol, anhydrous alcohol, bio-diesel and wet alcohol.

§ 69-51-1. Goal to encourage ethanol production plants.

It is the goal of this state to encourage ethanol production plants in the state to utilize Mississippi-produced corn and other agriculture and forest resource commodities.

SOURCES: Laws, 2002, ch. 603, § 1, eff from and after June 30, 2002.

Cross References — Ethanol defined as a gasoline and petroleum product, see § 75-55-5.

§ 69-51-3. Definitions.

For the purposes of this chapter, the following terms shall have the meanings ascribed to them herein unless the context clearly indicates otherwise:

(a) "Anhydrous alcohol" means fermentation ethyl alcohol derived from biomass, but that does not meet ASTM specifications or is not denatured and is shipped in bond for further processing.

(b) "Biomass" means any organic matter which is available on a renewable basis including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, and animal wastes.

(c) "Ethanol" means fermentation ethyl alcohol which is produced from biomass and, that:

(i) Meets all of the specifications in ASTM specification D 4806-88; and

(ii) Is denatured as specified in Code of Federal Regulations, Title 27, parts 20 and 21.

(d) "Ethanol plant" means a plant at which ethanol, anhydrous alcohol or wet alcohol is produced.

(e) "Wet alcohol" means agriculturally derived fermentation ethyl alcohol having a purity of at least fifty percent (50%) but less than ninety-nine percent (99%).

SOURCES: Laws, 2002, ch. 603, § 2, eff from and after June 30, 2002.

Cross References — Ethanol defined as a gasoline and petroleum product, see § 75-55-5.

§ 69-51-5. Cash payments to producers of ethanol, anhydrous alcohol, bio-diesel and wet alcohol.

(1) The Commissioner of Agriculture and Commerce is authorized to make cash payments to producers of ethanol, anhydrous alcohol, bio-diesel and wet alcohol located in the state. These payments shall apply only to ethanol, bio-diesel, anhydrous alcohol and wet alcohol fermented and produced at plants in the state. For purposes of this section, an entity that holds a controlling interest in more than one (1) ethanol or bio-diesel plant is considered a single producer. The amount of the payment for each producer's annual production is:

(a) Except as provided in subsection (2) of this section, for each gallon of ethanol, bio-diesel or anhydrous alcohol produced in Mississippi in accordance with subsection (13) of this section on or before June 30, 2005, or for ten (10) years after the start of production, whichever is later, Twenty Cents (20¢) per gallon; and

(b) For each gallon of wet alcohol produced in Mississippi in accordance with subsection (13) of this section on or before June 30, 2005, or for ten (10) years after the start of production, whichever is later, a payment in cents per gallon calculated by the formula "alcohol purity in percent divided by five (5)," and rounded to the nearest cent per gallon, but not less than Eleven Cents (11¢) per gallon.

The producer payments for anhydrous alcohol, bio-diesel and wet alcohol under this section may be paid to the original producer.

No payments shall be made for production that occurs after June 30, 2015.

(2) If the level of production at an ethanol or bio-diesel plant increases due to an increase in the production capacity of the plant, the payment under subsection (1)(a) of this section applies to the additional increment of production until ten (10) years after the increased production began. Once a plant's production capacity reaches thirty million (30,000,000) gallons per year, no additional increment shall qualify for the payment.

(3) The commissioner is authorized to make payments to producers of ethanol, bio-diesel or wet alcohol in the amount of One and One-half Cents (1-½¢) for each kilowatt hour of electricity generated using biomass in a cogeneration facility at an ethanol plant located in the state. Payments under this subsection shall be made only for electricity generated at cogeneration facilities that begin operation by June 30, 2005. The payments apply to electricity generated on or before the date ten (10) years after the producer first qualifies for payment under this subsection. Total payments under this subsection in any fiscal year may not exceed Seven Hundred Fifty Thousand Dollars ($750,000.00). For the purposes of this subsection:

"Cogeneration" means the combined generation of:

(a) Electrical or mechanical power; and

(b) Steam or forms of useful energy, such as heat, that are used for industrial, commercial, heating or cooling purposes.

(4) Payments under subsections (1) and (2) of this section to all producers may not exceed Thirty-seven Million Dollars ($37,000,000.00) in a fiscal year.

Total payments under subsections (1) and (2) of this section to a producer in a fiscal year may not exceed Six Million Dollars ($6,000,000.00).

(5) By the last day of October, January, April and July, each producer shall file a claim for payment for ethanol, bio-diesel, anhydrous alcohol and wet alcohol production during the preceding three (3) calendar months. A producer with more than one (1) plant shall file a separate claim for each plant. A producer that files a claim under this subsection shall include a statement of the producer's total ethanol, bio-diesel, anhydrous alcohol and wet alcohol production in Mississippi during the quarter covered by the claim, including anhydrous alcohol and wet alcohol produced or received from an outside source. A producer shall file a separate claim for any amount claimed under subsection (3) of this section. For each claim and statement of total ethanol, bio-diesel, anhydrous alcohol and wet alcohol production filed under this section, the volume of ethanol, bio-diesel, anhydrous alcohol and wet alcohol production or amounts of electricity generated using biomass must be examined by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants.

(6) Payments shall be made November 15, February 15, May 15 and August 15. A separate payment shall be made for each claim filed. Except as provided in subsection (9) of this section, the total quarterly payment to a producer under this subsection, excluding amounts paid under subsection (3) of this section, may not exceed One Million Five Hundred Thousand Dollars ($1,500,000.00).

(7) If the total amount for which all producers are eligible in a quarter under subsection (3) of this section exceeds the amount available for payments, the commissioner shall make payments pro rata.

(8) After July 1, 2002, new production capacity is eligible for payment under this section only if the commissioner received:

(a) An application for approval of the new production capacity;

(b) An appropriate letter of long-term financial commitment for construction of the new production capacity; and

(c) Copies of all necessary permit applications for construction of the new production capacity. The commissioner may approve new production capacity based on the order in which the applications are received.

(9) Notwithstanding the quarterly payment limits of subsections (4) and (6), the commissioner shall make an additional payment in the eighth quarter of each fiscal biennium to ethanol or bio-diesel producers for Twenty Cents (20¢) per gallon of production in the eighth quarter of the biennium that is greater than seven million five hundred thousand (7,500,000) gallons.

(10) The commissioner shall adopt rules to implement this chapter and objective criteria by rule for who is eligible or not eligible for payment in compliance with this chapter.

(11) A plant in production or under construction by June 30, 2005, shall continue to receive uninterrupted payments under this section of at least Twenty Cents (20¢) per gallon of ethanol or bio-diesel produced until July 1, 2015.

(12) Promotional or educational efforts related to ethanol that are financed wholly or partially with state funds and that promote or identify a particular crop or commodity used to produce ethanol must also include a description of the other potential sources of ethanol listed in Section 69-51-3.

(13) It is the intent of this legislation that corn, biomass and resource commodities shall be furnished totally by Mississippi farmers insofar as the supply is available.

SOURCES: Laws, 2002, ch. 603, § 3; Laws, 2003, ch. 528, § 1; Laws, 2005, ch. 364, § 1, eff from and after July 1, 2005.

CHAPTER 53

Agritourism [Repealed effective July 1, 2014]

Sec.

69-53-1.	Definitions [Repealed effective July 1, 2014].
69-53-3.	Agritourism activity liability [Repealed effective July 1, 2014].
69-53-5.	Warning notice [Repealed effective July 1, 2014].
69-53-7.	Registration of agritourism professionals [Repealed effective July 1, 2014].
69-53-9.	Repeal of chapter [Repealed effective July 1, 2014].

§ 69-53-1. Definitions [Repealed effective July 1, 2014].

As used in this chapter, the following terms shall have the meanings ascribed, unless the context requires otherwise:

(a) "Agritourism" means the travel or visit by the general public to, or the practice of inviting or allowing the general public to travel to or visit a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation for the purpose of enjoyment, education, or participation in the activities of the farm, ranch, or other agricultural, aquacultural, horticultural, or forestry operation.

(b) "Agritourism activity" means any activity which allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including, but not limited to, farming activities, ranching activities or historic or cultural or natural attractions.

(c) "Agritourism professional" means any person, partnership, corporation, or the employees or authorized agents, who offer or conduct one or more agritourism activities, whether or not for compensation.

(d) "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity, including, but not limited to, certain hazards involving surface and subsurface conditions, natural conditions of land, vegetation and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming, ranching, or other commercial agricultural, aquacultural, horticultural or forestry operation. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(e) "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity.

SOURCES: Laws, 2012, ch. 418, § 1, eff from and after passage (approved Apr. 18, 2012.)

Editor's Note — For repeal of this section see § 69-53-9.

§ 69-53-3. Agritourism activity liability [Repealed effective July 1, 2014].

(1) Except as provided in subsection (2) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities if the warning contained in Section 69-53-5 is posted as required and, except as provided in subsection (2) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional may plead the provisions of this section as an affirmative defense.

(2) Nothing in subsection (1) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

(a) Commits or omits an act if the act or omission constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage or death to the participant.

(b) Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage or death to the participant.

(c) Intentionally injures the participant.

(3) Nothing in subsection (1) of this section:

(a) Prevents or limits the liability of an agritourism professional under products liability laws.

(b) Shall be construed so as to negate that assumption of risk is an affirmative defense.

(4) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

SOURCES: Laws, 2012, ch. 418, § 2, eff from and after passage (approved Apr. 18, 2012.)

Editor's Note — For repeal of this section see § 69-53-9.

§ 69-53-5. Warning notice [Repealed effective July 1, 2014].

(1) Every agritourism professional must post and maintain signs that contain the warning notice specified in this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one (1) inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction or the rental of equipment to a participant,

whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (2) of this section.

(2) The signs and contracts must contain the following notice of warning:

"WARNING

Under Mississippi law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if the injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment and animals, as well as the potential for you or another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

(3) Failure to comply with the requirements concerning warning signs and notices provided in this section will prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.

SOURCES: Laws, 2012, ch. 418, § 3, eff from and after passage (approved Apr. 18, 2012.)

Editor's Note — For repeal of this section see § 69-53-9.

§ 69-53-7. Registration of agritourism professionals [Repealed effective July 1, 2014].

(1) An agritourism professional must register with the Mississippi Department of Agriculture and Commerce on an annual basis. The registration shall contain information describing the agritourism activity that the agritourism professional conducts or intends to conduct and the location where the person conducts or intends to conduct such agritourism activity. Additionally, the agritourism professional must pay an annual fee in the amount of Fifty Dollars ($50.00) to the Department at the time of registration. There is established in the State Treasury a special fund for the Mississippi Department of Agriculture and Commerce for the monies collected under this section. Unexpended monies remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund.

(2) The Department shall maintain a list of all registered agritourism professionals, the registered agritourism activities conducted by each professional, and the registered agritourism location where the professional conducts such activities. Such list shall be made available to the public. The Department, in conjunction with other agritourism and rural economic efforts, shall promote and publicize registered agritourism professionals, activities and locations to advance agritourism in the state. The Department assumes no legal liability by registering agritourism professionals, but merely serves to promote agritourism in the state.

(3) The Department shall adopt guidelines to carry out the intent of this chapter.

SOURCES: Laws, 2012, ch. 418, § 4, eff from and after passage (approved Apr. 18, 2012.)

Editor's Note — For repeal of this section see § 69-53-9.

§ 69-53-9. Repeal of chapter [Repealed effective July 1, 2014].

This chapter shall stand repealed on July 1, 2014.

SOURCES: Laws, 2012, ch. 418, § 5, eff from and after passage (approved Apr. 18, 2012.)

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Defoliant.
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Entomologist.
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EPA.
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Fungicide.
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Governmental.
  Soil and water conservation, §69-27-301.
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Herbicide.
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Hog cholera virus.
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Horticultural and floricultural work.
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Hospitality operator.
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Host.
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Hotel.
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Hybrid.
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Hydrated lime.
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Imminent hazard.
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Industrial by-product.
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Inert ingredients.
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Inert matter.
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Infested.
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Information gathering program.
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Ingredient.
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Ingredient form.
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Insecticide.
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Interest loan.
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Land operator.
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Landowner.
  Soil and water conservation, §69-27-301.
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Lender.
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Licensed pesticide dealer.
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Limestone.
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Livestock market.
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Lot of seed.
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Management program.
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Manufacturer.
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Mark.
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Marl.
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Menu.
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